

of the matter is that the President always has the responsibility of the security of the Nation, whether he has it by law or not.

Mr. PORTER. Yes.

Mr. FASCELL. By virtue of the fact that he is President.

Mr. PORTER. But how far we let him go depends on the doctrine of the Constitution, especially the first, fifth and ninth amendments, among other things, all of which would be violated. We should not be worried about violations in court; we should be concerned here about the kind of legislation which reduces the liberties of American citizens.

Mr. FASCELL. The gentleman will admit, will he not, that there is information now here in Washington which the gentleman is not entitled to and does not receive as a Congressman, because, from the executive viewpoint and under his responsibility, it affects national security, and therefore he cannot have it?

Mr. PORTER. I am glad to see that the gentleman is coming around to my viewpoint because, when there is information which I am not allowed to get it is because of its nature, because of its being highly confidential, highly secret.

Mr. FASCELL. I am glad to see that the gentleman is coming around to my viewpoint.

Mr. PORTER. It is done only under special circumstances and in this I see no such special circumstances with regard to any country in the world that we should keep—

Mr. FASCELL. That is the opinion of the gentleman from Oregon.

Mr. PORTER. That we should keep American citizens from going within their boundaries. These countries may keep us out, but under our history and traditions as a free Nation we should not be told that we are not free to let our citizens go any place in the world.

Mr. FASCELL. I would certainly agree with that last statement of the gentleman, but I would say—

Mr. PORTER. I am glad that the gentleman has accepted my viewpoint.

Mr. FASCELL. I have not accepted the gentleman's viewpoint by any long stretch of the imagination. The gentleman's construction of my answer is just as strained as his construction of the law, as his construction of the President's responsibility, and as his construction of his own responsibility.

Mr. PORTER. I will withdraw my remark if the gentleman will recognize that his own remarks are frivolous, too.

Mr. FASCELL. I will certainly not admit that my remarks are frivolous and I would not ask the gentleman to withdraw his remarks at all, because I would want his to stand by the test of logic and reasonableness, as I would require mine to stand the same test.

I should like to ask the gentleman this question. Will he admit that there is a difference in responsibility with respect to problems of foreign affairs and problems of national security as between the President of the United States and the Representative from Oregon?

Mr. PORTER. Of course. We each under the Constitution have our own

duties. One of my duties is to seek facts everywhere, in books, personally, so that my decisions may be as wise and as responsible as possible within my very human limitations.

Mr. KASEM. Mr. Speaker, will the gentleman yield?

Mr. PORTER. I am glad to yield to the gentleman.

Mr. KASEM. During this past Congress I have sometimes despaired of my usefulness as a Congressman to the people of the United States and I have thought perhaps I could better serve the interests of the free world if I went to the Anglo-Egyptian Sudan, in that great continent of Africa, where they are groping for democracy and the way to go as the age of industrialization comes upon them. I thought perhaps I could be of greater service both to the United States and to every man. I thought I might like to go down there and help them get an educational system started, have them learn something of the technology of the United States. But in order for me to do that, if this were the law, if the President of the United States were to determine that this was not in the best interests of the international relations of the United States, I would not be able to go; is that right?

Mr. PORTER. That is right. It would be up to the President to decide, in his own unbridled discretion.

Mr. JUDD. Mr. Speaker, will the gentleman yield?

Mr. PORTER. I yield.

Mr. JUDD. The bill requires, not that the travel be determined to be merely unfavorable to or not in the best interests of the United States; it would have to "seriously impair the foreign relations of the United States." The language of the bill is quite different from the language the gentleman used—it would have to "seriously impair."

Mr. PORTER. Let me point out to the gentleman from Minnesota that there is no way to question the President's decision under this because, as has been pointed out, he has the power to decide what is the foreign policy of the United States. All that he has to do every year is to say what he thinks. If we do not like it, we can go to the stump but we cannot change it and the gentleman from California [Mr. KASEM] would still be kept out of the Sudan.

Mr. JUDD. That does not go along with the argument that the gentleman has used here repeatedly, namely, that the people of America can be trusted with the facts, that they can and will make their own judgments. If the President of the United States were to make such a decision on a frivolous basis, unbridled, without solid cause, an abuse of his authority, the gentleman knows as well as anyone what an avalanche of public condemnation would come upon his head. It is unthinkable that any President would use capriciously or arbitrarily or irresponsibly this authority, and no President ever has in the whole history of our country, before the authority was questioned last year by the Supreme Court. But a President would be derelict in his duty and irresponsible if he did not exercise this authority

whenever he is convinced that the activities or the presence abroad of a given American, whether a Congressman or whatever, would in a particular situation seriously impair the conduct of our foreign affairs, which the Constitution—not this law—places in his hands.

Mr. PORTER. That is, in his opinion. But I say to the gentleman that ours is a Government of checks and balances and we do not suspend all these checks and balances and the doctrine of the separation of power for 4 years and then decide whether or not the President has done the right things. Of course, we criticize the President if we think he has violated any of these doctrines, but we do not suspend them. We say that we are going to give him the discretion and we hope that he exercises it rightly. But we maintain the checks and balances and we are going to maintain the separation of powers doctrine also, I believe.

Mr. JUDD. But the Constitution itself gives him the authority in this field. If we do not like the way he conducts our foreign relations, we have ultimately only one appeal. That is to impeach the President.

Mr. PORTER. I agree that it would help the President in carrying out his foreign policy to have this power, just as it would help him if he were given the opportunity and the privilege of reading all of our speeches before we gave them, or of reading all of the editorials in the newspapers before they were printed. But we are not going to give up those freedoms because we balance them against the advantage that it would be to him.

Mr. KASEM. Mr. Speaker, will the gentleman yield?

Mr. PORTER. I yield to the gentleman.

Mr. KASEM. The gentleman from Minnesota and I believe in Almighty God, but I do not believe that Almighty God has been elected the President of the United States yet. We have consistently and persistently delegated the powers of this Congress to the executive branch with these rules like "in the public interest" and "reasonable conditions exist" and so on. We have hardly passed a piece of legislation in this session which was not a delegation of authority to the executive, it was an abandonment of our congressional duties. In view of the famous, I think it was, Butler decision in the poultry case under the NRA where it was held unconstitutional when the Congress delegated this authority—what are we going to be faced with in these matters?

Mr. PORTER. I thank the gentleman. I suppose no one wants to make the veto power of the President absolute in any matter.

The SPEAKER pro tempore. The time of the gentleman from Oregon has expired.

U.S. CONSTITUTION: THE POWER IN THE STATE AND PEOPLE

Mr. ALFORD. Mr. Speaker, I ask unanimous consent to extend my remarks at this point in the Record and to include extraneous matter.

The SPEAKER. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

Mr. ALFORD. Mr. Speaker, a grave constitutional crisis was precipitated in 1954 by the Brown case ruling of the U.S. Supreme Court. That decision, required forced integration in public schools of the States, was largely based on theories of a Swedish and other sociologists—evolution, not revolution is the answer. Thoughtful citizens throughout the Nation were shocked at this constitutionally unauthorized assumption of legislative power.

What at the time appeared a matter affecting only school administration has now expanded into the greatest constitutional issue in our history. It affects practically every facet of American life, not only the specific questions of forced racial integration in public schools but also such matters as the destruction of vast real estate values, taxation to cover the cost of enforcement and resistance, harassment of State officials and their diversion from pressing problems requiring concentrated attention, causing of strife between races where harmonious relations previously existed, attempted breaking of wills, impairment of our educational systems at the very time we are lagging in educational production as compared to that in the Soviet Union, and even an armed Federal assault on the capital city of Arkansas and the illegal military occupation of its high school, coupled with the unconstitutional federalization of that State's militia.

The tragic events in Little Rock, still fresh in our minds, helped to dramatize the gravest issue involved: Constitutional liberty or administrative centralism.

The great mass of our press, editors, and commentators, through ignorance or design, have failed to clarify the constitutional issues. Few voices were raised to show the way out of a situation as grave as that of 1776.

Meanwhile, many States, in ill-advised efforts to protect their people from long recognized evils of integration, resorted to counter coercive measures, which inevitably proved to be legal "booby traps." Thus, the time is overdue for a rigorous clarification of the constitutional issues involved—questions which transcend all partisan and personal considerations and must be determined on the highest plateau of patriotism and statesmanship.

Among the first important steps at clarification was creation by the Commonwealth of Virginia of its Commission on Constitutional Government, a body of distinguished membership. In a statement on September 9, 1958, on the fixing of boundary lines in Federal-State relations, this body laid the groundwork for national debate and appealed to the people of all the States to reflect upon the serious constitutional dangers of the course set in motion by the 1954 Brown case ruling.

Did the great metropolitan press and other molders of mass opinion meet this challenge and present an adequate treatment of the issues? They did not.

It was, however, taken up by a small western newspaper, the Pioche Record, of Pioche, Lincoln County, Nev. In a remarkable series of editorials starting on October 23, 1958, it undertook to deal adequately with the constitutional issues, attracting attention of thoughtful leaders in many parts of the Nation, including State legislatures and the Congress.

Featured by simple and incisive expression that eliminates the inconsequential and focuses on the fundamental, these editorials effectively clarify the constitutional powers in the State and people and show the way out of the dangerously explosive situation provoked by the usurpations of the sociologically minded Warren Supreme Court.

Dealing with questions as complicated and hazardous as those which faced the Founders of our Federal Government, these Pioche Record editorials measure up to the standards of the celebrated "Federalist Papers" by Alexander Hamilton, John Jay, and James Madison. The "Federalist Papers" aimed at creating the Federal Union; the Pioche Record papers at its preservation.

As such they are commended for study by all concerned with the problems of maintaining State sovereignty and individual liberty under our system of constitutional government. But especially are they commended to cognizant agencies in our Federal and State governments; our high schools, colleges, and universities in the fields of history, political science, and law; and the professional and lay press of the Nation.

To all these intellectual and governmental leaders, I would stress that under our constitutional system of government, the people are sovereign and organized into an indestructible Union composed of indestructible States. The people realize that they have suffered loss of their rights and liberties because of usurpation of power by officers of their Government. Moreover, they are determined to retrieve them through constitutional processes.

Also, I would emphasize to those studying these matters that school racial segregation or race mixing, public schools or private schools, or even the recent Supreme Court assault on one of the Biblical commandments that in some States is embodied in law, are not the real issues, but only the effects of criminal usurpations. The real issues are constitutional questions which, when properly resolved, should effect a return to constitutional morality.

The solution is not through negative evasive tactics to what is legally unauthorized or by other confusing distractions, but in the positive method of the States taking firm legal stands in the enforcement of the Constitution with provisions for adequate sanctions against usurpers.

In order that these splendid contributions may be available to the Nation, I include as part of these remarks the full texts of the Pioche Record editorials followed by the September 9, 1958, state-

ment of the Virginia Commission on Constitutional Government:

[From the Pioche Record, Pioche, Lincoln County, Nev., Oct. 23, 1958]

THE SUPREME COURT, THE CONSTITUTION OF THE UNITED STATES, AND THE SOUTH'S PUBLIC SCHOOL PROBLEM

Recent decisions of the U.S. Supreme Court have subjected that wing of our Government to what is perhaps the sharpest criticism it has received at any time in the history of this country. One of the most far-reaching of these is in relation to the decision of the Court which directs who can attend what schools maintained by the States of Arkansas and Virginia.

The President has expressed concern over some of the Court's rulings. The Legislature of the State of Virginia has appointed a special commission to study and report on the decisions of the Court, as they relate to their powers to regulate attendance at schools maintained by the taxpayers of the State and which may require white children to attend colored schools in some cases, where it is contrary to their wishes.

Newsweek in its October 20 issue, quotes retired Federal Judge Learned Hand as saying: "When the Court strikes down a law because it does not 'commend itself to the Court's notion of justice,' then the Court is usurping the function of the legislative branch and becomes, in effect, 'a third legislative chamber.'"

THE SHARPEST CRITICISM

But, says Newsweek, "The sharpest criticism that the Court has received from American jurists came at the conference of State Chief Justices, in California, last August. There an overwhelming majority—36 to 8—voted for a resolution charging that the Court 'too often has tended to adopt the role of policymaker without proper judicial restraint.'" Continuing, Newsweek says, "such criticism of the highest tribunal by the Nation's top State judges was without precedent, and it was a hard blow at the Court's battered prestige."

The keynote of the report of the Virginia Commission is that the Supreme Court by its mandate is in effect making a new law. It is not ruling, as a Court, in accord with the established law. It is upsetting the law—law which has been established by enactments of the lawmaking power, founded in the Constitution and stabilized by prior rulings of the highest Court and so administered over a long period of years.

This upsetting of the clear intent of the Constitution as well as upsetting established law, is a revolutionary movement which brings about what is classed by Senator HARRY BYRD as the gravest crisis since the War Between the States. Not that the Supreme Court should dictate who in their opinion is to attend what schools but that the Court should supersede the State in directing the management of the State's schools, without clear authorization under the Constitution giving it the power to do so.

THE 14TH AMENDMENT

The Virginia Commission in its report issued on September 9, 1958, makes the following observations: "The 14th amendment, leaving aside all questions of the validity of its adoption, was conceived primarily as a prohibitory amendment. It was intended to prohibit to the States certain powers they had exercised in the past; specifically, the States were prohibited from denying to any citizen the 'equal protection of the laws'—the rights, for example, to own property, to enter into contracts, and to sue and be sued. "Clearly, the Congress that framed the 14th amendment, and the States that ratified it, never intended for an instant that a guarantee of equal protection of the laws

was to affect the operation of separate schools in any way. Long after the amendment was ratified, States both north and south continued to maintain racially separate institutions. It is unthinkable that they understood the amendment to prohibit them from the exercise of powers they were daily exercising.

"The correctness of this understanding was confirmed repeatedly by the highest State and Federal courts in an unbroken line of decisions stretching over many years. It was confirmed, also, by the tacit acquiescence of the States themselves. When the doctrine of separate but equal was sanctioned by the Supreme Court of the United States in 1896, not a single State voiced a protest or asserted a misinterpretation of the amendment. And Congress, from the date of the amendment until the date of the school segregation cases, demonstrated its understanding of the amendment by actively maintaining separate schools in the District of Columbia. Thus the boundary line was fixed. By what authority may it now be changed?"

THE COURT'S ORDER IS WITHOUT AUTHORITY

"The position of the Southern States today is that the governmental power they exercised constitutionally for so many years—the power to maintain racially separate schools—cannot be prohibited to them by a mandate of the Supreme Court. Many persons, it appears, believe that the Court has the right, as well as the power, to impose this prohibition upon the States as an addition to the law of the land. In actual fact, the Court's mandate is no more than the law of the case in which it is handed down; the Court's power is a judicial power, not a legislative power, and it is worth emphasizing that there is now no law and no provision of the Constitution requiring racially integrated schools. In effect the Court sought not merely to interpret the Constitution, but substantively to amend the Constitution, and this the Court has no authority to do."

Another question: Is it for the Federal courts to undertake to enforce their decisions through injunction proceedings? While such a course may be taken against officers of the United States it is beyond the authority granted by the State if exercised against an officer of the State. It then becomes an unauthorized act and it may be a forceful invasion of the rights of the State.

A TOWERING QUESTION OF CONSTITUTIONAL AUTHORITY

No such power has been granted to the Federal Government but on the contrary such power has been specifically denied, except on the request of the Governor of the State whose constitutional rights are invaded. It then becomes the problem of the State to determine how can the dignity and lawful powers of the State be defended from the unlawful and aggressive interference by the Federal Government. And this is the outstanding question.

The recent report of the special commission of the Virginia Legislature classes this as "a towering question of constitutional government which transcends the immediate and personal issues of particular children in particular schools. The human conflicts presented over the South's public schools are real, are complex and cannot be minimized." Then the report points out the principle of government wherein the solution lies, namely that, "our Union is a union of States. That is what it was in the beginning and that is what it remains today. In this Union, all power to govern flows from the people in their States. Some powers the people have delegated, under the Constitution, to Federal authority; all other powers they have reserved, under the Constitution to themselves."

THE VIEWS OF STATESMEN AND JUSTICES

The commission in concluding its report points out that these apprehensions are not

peculiar to the South in 1958; Washington voiced them in his Farewell Address. Lincoln many times emphasized the same points. Holmes, Hughes, Sutherland, Harlan, Taney, among a host of great jurists, have insisted down through the years on strict adherence to the rule, in Hughes' phrase, that "it is not for the Court to amend the Constitution by judicial decree." More recently, Mr. Justice Black has asserted that it is not for the Supreme Court "to roam at large in the broad expanse of policy and morals, and to trespass on the legislative domain of the States." Mr. Justice Douglas has warned that "instability is created" when "a judiciary with life tenure seeks to write its social and economic creed into the charter." The late Chief Justice Vinson emphasized that, "because the Court must rest its decisions on the Constitution alone, we must set aside predilections on social policy and adhere to the settled rules which restrict the exercise of our power to judicial review."

The Conference of Chief Justices of 44 States in their meeting in August proclaimed as "sound doctrine" the following words of Elihu Root:

"If the people of our country yield to impatience which would destroy the system that alone makes effective these great impersonal rules and preserves our constitutional government, rather than to endure the temporary inconvenience of pursuing regulated methods of changing the law, we shall not be reforming, we shall not be making progress, but shall be exhibiting . . . the lack of that self-control which enables great bodies of men to abide the slow process of orderly government, rather than to break down the barriers of order when they are struck by the impulse of the moment."

THE BECLOUDED BUT REAL ISSUE

In response to these appeals, the people are called to face the question:

Can the Supreme Court overrule the law as already made and established? Can they put into effect a new law prompted by political or social aims which happen to be the personal views of the members of the Court and not approved by the people, who are the high source of all lawmaking powers under the theory of government set forth in the Declaration of Independence. Shall the Court be permitted to usurp the amendatory power which under the Constitution requires the ratifying vote of three-fourths of the States?

Especially, shall they be permitted to do these things where such grave consequences must follow from disrupting the happy relation, achieved only with greatest difficulty, of two races living together in the same localities, with mutual respect and esteem and often with mutually affectionate regard?

Collateral details enter, but should not becloud the main matter for consideration which is not what shall be done, or how the States should proceed in solving their problems or how long it should take in working out the solution, but rather the immediate question is, who has the right or legal power to interfere with the States in the exercise of their own judgment in the solution of their problems.

And the further question, shall we disintegrate and destroy that bulwark of our liberties—the Constitution of the United States, under which after throwing off foreign rule, there was given to the States which elected to join in, the assurance against future foreign rule for them, by the provision that all rights not specifically given up to the planned association were reserved to each of those who would join in and further that the agreed plans of the association could not be changed, altered, corrected or improved without the voted assent of the legislatures of three-fourths of the States.

The Virginia Commission on Constitutional Government in concluding its report,

appeals to "our sister States"—"to view the matter dispassionately, and not fail to perceive the grave danger to all State powers that lies in the Court's drastic action here."

[From the Ploche (Nev.) Record, Nov. 6, 1958]

OUR CONSTITUTION—SHALL WE DESTROY IT—OR AMEND IT?

In a recent issue of the Ploche Record we published parts of a report of the Virginia Commission on Constitutional Government.

That report charges that the U.S. Supreme Court, an agency of judicial powers, has usurped governmental powers; that its decision, which has since had the result of forcing schools to be closed, schools which were being operated under the management of the State, is void and lacking in legal effect. The report is a challenge to the U.S. government as to its operations under a void and illegal order of Court.

It would be difficult to overestimate the importance of this report of the Virginia Commission, in view of the determined attitude of the State to defend its right to manage State schools, without interference from the National Government.

If the Legislature of Virginia, by its regular lawful procedure, should endorse and approve this report, and make it an action of the State, we would face an amazing situation: The State of Virginia, a government of plenary powers, in dealing with a government of no primary powers at all, but only secondary or delegated powers, is charging its created agency with having acted beyond the powers granted to it, and further of attempting to enforce this assumed authority.

It is to be noted as a detail, that this coercive attempt is against a Government from which their lawfully delegated powers were derived. It is also to be noted that when the execution of these delegated powers was entrusted to the agency Government, created for that purpose; namely the United States of America, oaths of office were to be required from all important employees of the agency government, so that they would not exceed the authority granted to them. All their acts were to be in accord with this authority, and their oath of office even goes so far as to require them to preserve, defend and protect these limitations to their power.

WHAT IS THE LAW?

The order of the Court in question is not a judicial determination of an issue at law. The law having long ago been determined differently the Court's act amounts to legislation, or to a new law, changing an old law. It is without authority under the Constitution to do this, says the Virginia Commission. In such case it is not an order of a Court at all. Under our law an order lacking in authority is void. What in law is void is a nullity. It does not exist. There is no order of a Court to be enforced in a case where Constitutional authority is lacking.

Let us assume that the facts as stated by this report of the Virginia Commission are later sustained by formal approval of the State, and the report, or some modification of it, becomes a legislative act and a formal declaration of the State of Virginia. In that case the charges against the National Government, of which the Supreme Court is but one branch, may be compared with the events at the time when the effort of the British Government to collect taxes on tea in Boston, levied without the consent of the people, led to action by the unorganized "minutemen" of Massachusetts.

And the action of the executive branch of the U.S. Government in sending troops into Arkansas, to enforce the rule of a court acting without constitutional authority, may be compared with the sending of British troops

to enforce foreign edicts and to arrest citizens of Massachusetts, on orders originating in England.

Has the President of the United States sent the Nation's military force into a State to enforce an order of a group of men lacking in authority? So states the Virginia Commission, and if the State of Virginia through its legislative branch adopts this as its determination, we have a ruling from a higher legal authority than the Supreme Court because it is the source of the authority given to the Supreme Court.

MILITARY MIGHT

The President has sent in troops and he says the orders of the Court must be enforced. The commission takes up the question, whether the Court's orders are valid and declare them to be invalid. They are lacking in authority at the base of the proceedings. And if the State of Virginia adopts and approves this report of its commission the exact issue is formally matured. It is laid down on the line for solution. And the solution must be by law and not by force.

The Constitution as adjudicated and administered for half a century had fixed the law to be that States can have separate but equal school facilities, under the 14th amendment. This construction by the U.S. Supreme Court in 1896, was approved, consented to and practiced by all of the States, including the District of Columbia. This crystallizes and permanently establishes the law. How can this be changed?

Says the Virginia Commission, an act of legislation can be changed by Congress, an act of the Constitution can be changed by amendments as allowed under the Constitution, which requires the ratification of three-fourths of the States, but the Supreme Court cannot legislate at all, either to change an act of Congress, to change the Constitution provisions or to change the law.

The Virginia Commission makes another and less important point. For the "equal protection of the law" provision of the 14th amendment to be construed so as to give power to regulate schools leads to the question was it so intended? What is meant by "protection of the law?" Was it intended to give the Supreme Court the power to regulate the liquor laws of Mississippi, or the gambling laws of Nevada, so that all of its citizens may have "equal protection of the laws" from the use of liquor or from losses from gambling.

WHO IS TO MAINTAIN OUR CONSTITUTION?

If the President of the United States sent the military power into Nevada to enforce a Court ruling that the 14th amendment of "equal protection of the law" was violated, would there be any remedy somewhere in the framework of our law for this assumption of power to be classed as a usurpation?

Of course with the State of Nevada the case is different. Nevada did not take an independent position among the nations of the world before the United States was formed. Nevada did not create or delegate powers to the United States. Nevada was created by the United States. Nevada as a government is secondary not primary. However it too in some way should be protected from the Government's encroachment on its rights.

If the members of the Supreme Court take an oath of office which requires them to support and maintain the Constitution of the United States, and if the State of Virginia charges that they have upset the law as established under the Constitution and have promulgated a new and different law, what shall be the source of power, and what the proceedings, to call a halt on such usurpation of power?

If the authorized government of Virginia declares the Supreme Court lacks constitutional powers, and the Supreme Court declared they have not transgressed their constitutional powers, where are we?

ACTION TO REPLACE WORDS

We have arrived at a point where what has been nebulous is definite. What before has been conversation becomes action. Words and conversation are converted into concrete legal positions and the higher law must govern. And the law to be applied is extremely simple. If the authority resides in the Court its position is supported, otherwise not. But the Court cannot be an autocratic arbiter of its own authority where that is denied by the source of the authority granted and where there is the provision that all authority not granted is specifically denied.

The simple process of history leads us to the solution of the problem. The State must decide what to do when it is faced with a usurpation of powers it has reserved and now declines to give up. Where the U.S. Government happens to be the usurper, this becomes a detail that should not confuse the legal construction.

In such a situation the U.S. Government is being called upon to respond to the charge made by the State, and to disclose wherein the power was conferred upon it to run the schools of the State of Virginia, and it must show that power was given expressly and not inferentially. In such a legal study no construction of language can confer power on the Supreme Court. It must be plainly stated. So plainly stated in fact that it must have been the intent of the State, when the language was ratified, to convey the powers claimed.

It is to be presumed that the U.S. Government will respond if a charge is brought against it by the State of Virginia and that it will avail itself of the opportunity to remove the cause of complaint.

LAWFUL PROCEDURE

The Congress of the United States may find a solution by proposing a constitutional amendment so as to do legally what is attempted to be done illegally and thus clear away the doubts and differences. But the officials of the United States will lack governmental power to obstruct the States until this action, or some other action that meets the situation, is taken by the Congress.

The State can proceed along the lines directed by established law until U.S. agents exert physical force to stop the operation of its law. Then let the conduct of such agencies be surveyed in the light of law. If they lack authority they are as private citizens and responsible to the State for their conduct. Invalid immunity does not protect them from the consequence of resisting officers of the State. Federal proceedings and Federal authority can be questioned by the State authorities as to validity, as can any other proceedings or authority. Nowhere in the Constitution are the orders of a Federal court made immune from questioning by the government of the State affected.

THE PRESIDENT MUST OBEY THE LAW

Then what becomes of the power of the Executive to send troops to enforce what is claimed to be a law but which, as far as these States are concerned, lacks the authority of law and is so declared and ordered by the State. Troops cannot make law even if clothed in the pretense of enforcing law.

The Governor of Arkansas has called for a vote of the people and their mandate is overwhelmingly to the effect that the State shall run its own business and let the National Government and the other States run theirs.

The constitution of Virginia requires its government to "establish and maintain an efficient system of public schools." Is it not logical or reasonable, for an agency created by a government of State, and created with limited powers, to tell the State how it can be permitted to carry out the mandates of its own constitution?

Military might can close the schools of these States but it cannot force their people to abide by foreign-made laws, and what they have formally declared to be invalid laws, any more than British troops could force the people of Boston to abide by the laws of Parliament.

[From the Pioche (Nev.) Record, Nov. 27, 1958]

THE CONSTITUTION, THE COURTS, AND THE NEVADA MINING INDUSTRY

In a recent issue of this paper there appeared an editorial quoting extensively from the report of the Virginia Commission on Constitutional Government.

This editorial under the heading, "The Constitution, The Supreme Court, and the South's Public School Problem," has received unexpected widely spread comment and gratifying expressions of interest. Among these received is one from the editor of one of the leading papers in Virginia enclosing a scholarly and ably edited and documented report by the Committee for Courts of Justice of the Virginia Senate.

The purport of this report is that the State is committed to "resist encroachment by the Supreme Court, through judicial legislation, upon the reserved powers of the State," and it points out that "in every State and in every region, there are certain critical domestic problems of a State, or regional, character that wisely should be left for solution to the people most intimately familiar with them." Which proposed action, as far as Nevada is concerned, points an eloquent finger at the present paralysis of its principal and basic industry, an industry now largely inactive, which in the past has contributed so much to the wealth of the Nation. Without the fabulous monetary wealth produced from Nevada's mines in the early seventies extreme doubt has been expressed as to how, if at all, we could have emerged from our paper-money debacle at that time.

Incidentally this gave the only excuse there was for elevating Nevada with a few hundred population to the position of a State, so as to furnish the one extra vote needed to amend the Constitution and make legal the measures the Government had promised, and some of which now are concerned in this present situation.

BILL OF RIGHTS

This report of the Senate Committee also points out that before the State of Virginia signed the contract which gave away a part of the powers it held as an independent nation, achieved at so tremendous a cost by the treaty of peace in the war with England, it took extreme precautionary measures. The subordinate agency Government to which it assigned these powers was to be rigorously held within the limits of the contract being agreed to. And the State's convention demanded that a Bill of Rights be made a part of this contract. This Bill of Rights required among other things that all powers not granted were reserved to the States and that in the event of the exercise of arbitrary power it must be accepted as a matter of principle "that the doctrine of nonresistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind."

The State now claims the right to exercise this provision by all means within its reserved legal powers and appeals to "her sister States for that decision which only they are qualified under our mutual compact to make."

It would appear that assistance can be given in two ways. One by a clarifying amendment to the Constitution which would appear not at all necessary as the present wording is sufficiently clear and definite, if the language is construed in the light of what was intended by the signatory parties at the time of their agreement to it. Any

deviation from this intent would be clearly in violation of established law which would be beyond the power of the Court and would so invalidate its ruling.

If it is desired to change this intent as already established for over half a century then any such desired change could properly be effected by a constitutional amendment.

The other course for the State would be to declare what is the status of the law in the particular State in view of the ultra vires nature and consequent illegality of the Court's decision, where they find the facts to justify such legislation.

This is a procedure discussed briefly in our editorial of November 6, the purpose of which was to invite discussion and study rather than any effort to elucidate any particular method of escape from the condition of affairs now pressing so seriously in these States.

THE STATE OF NEVADA IS CONCERNED

The State of Nevada has no reason to be particularly concerned over the segregation question, but Nevada as a mining State is very much concerned with the depression of the developments of its mineral wealth through a similar misuse of the powers and processes of the Federal courts.

Also Nevada has suffered much along with the rest of the country from the officials of the United States, its courts and its legislative bodies, not being required to hold to their oaths of office which are intended to confine their actions strictly within the limits of their constitutional powers. The application of this matter to Nevada may not be of such immediate or critical concern as the closing of schools in other States, but it has mowed a broad swath of ruin to Nevada's basic industry.

The mines of Nevada have quite generally been closed as the cumulative result of laws which are little understood. The principal ones of these laws were arbitrarily not allowed to be debated in the House of Representatives (steamroller tactics) and for some reason they received little or no analytical discussion in the Senate. In the most important of these laws the time which should have been allowed for action was so limited that not a single Member of the House had read the bill when it voted its passage. Under such pressure as this they passed a law which brushed aside constitutional requirements, binding on both the legislative and the executive branches of the Government and as predicted has been followed by billions being added each year to the national debt.

MISAPPLICATION OF THE POWERS OF THE COURTS

As far as this discussion concerns the judicial department in relation to Nevada, it may be said that a large part of the area in this important mineral district at Ploche, has been held in idleness over a long period of years by the misuse of the processes and powers of the District Federal court and by its refusal for a long time to obey the orders of the higher court, meanwhile, from such parts of this area as were permitted to operate, there was produced more lead and zinc than any other area in Nevada and its full share of the production in the United States.

In the brief filed recently with the Court in that case we find the following:

"Therefore the key to the question of reinstating the original complaint brings in the more important question of how the instrumentalities of our law have been used, and how they can be used, as an instrument for depressing a business enterprise, and this despite the best and most diligent attention as far as the courts are concerned.

"There is much discussion today about a world of free enterprise. The issues in this case, in papers filed 18 years ago, and which have never been allowed to be tried,

touch the question, Is there a world of free enterprise and are we part of it?"

For these reasons it could be expected that the State of Nevada, in principle will lend a willing ear to the appeal of the Virginia State Commission, for help in the position it is in, but more properly after the issue is more clearly defined. After the governments of the affected States speak and pronounce that as far as those affected States are concerned, the ruling of the Supreme Court in the Brown Case is not law in Virginia and the actions of the members of that Court exceeds their constitutional authority, and the resulting orders are therefore null and void and of no effect as far as they conflict with the laws of Virginia.

Until then no matter how far beyond its powers is the action of the Court, nor how definitely the Court exceeds its authority, the President can and perhaps should, consider it his duty to enforce the formally expressed views of the members of the Court without giving his consideration to the question of what were the powers or rights of the members of the Court to render the decision.

After all the question of what are the powers of the Court is a matter more properly to be determined by the States whose laws are being interfered with or from States from whom the Court's powers have been derived, and those which alone have familiarity with the conditions to which the laws are being applied, on the principle that the powers of Government are derived from the consent of the governed.

THE ADVANTAGE OF A FIXED LEGAL POSITION

Despite the forceful, convincing, and eloquent appeals of committees and delegations and individuals within these objecting States, their lawmaking powers have not spoken. They have not formally proclaimed that the opinion in question is merely the views expressed by men, who happen to be members of the Supreme Court and is not the expression of a court whose opinion would be competent if based on constitutional authority and therefore cannot be considered the law within the jurisdiction of their State.

As soon as the State takes this step it becomes definite what its legal position is but until then all objections are but a matter of words which leaves the matter in such position that the orders of the Court must be considered the law. After the governments of Virginia or Arkansas take this step they are challenging the application of the Court's ruling to the laws of their State. Then the only question that can be raised is whether the legislation of the State or the ruling of the Court are the law in that State. It is doubtful, in such a case, if the President would apply force to suppress the State in carrying out its laws applicable to the situation, because in that State the Supreme Court ruling has been rendered of at least doubtful authority. The State law must then stand until this doubt is removed. The State is the source, and the Court or the National Government is the recipient, of the powers in question and where there is doubt the States have the authority.

The sister States can then make definite their position on one side or the other of this question. The States that are affected have the power to speak, where the rulings of the Court conflict with their laws. They are either the parties to the contract which gives, and limits, the powers to be exercised by the Court, or they have acquired the same privilege when they became a State.

But if Arkansas or Virginia speak and with the voice of their duly constituted government, they declare that the action of the Court is not within the power given it and declare the action of the Court to be null and void as far as the State is concerned, the matter then becomes a question between

two governments, the government of the State with all of its primary powers except those it has delegated, and the agency government possessed of only secondary or delegated powers, which powers have been relinquished to it by the State.

CONSTRUCTION OF CONTRACT IS THE ESSENCE OF THE CONTROVERSY

It then has become a question of the construction of a contract, between the two parties to the contract, thus eliminating the frills and fancies and entanglements that are brought in by the agencies of these governments, who cannot properly be the arbiters of their own powers nor the judges of their own actions.

The whole question is then susceptible of orderly discussion and action instead of remaining in the present confused state, which has resulted from efforts to experiment with the application of the Court's ruling to laws of the State, and to head off by this means conflict between State and Federal authorities. This is an indirect approach which was bound to fail in view of the Court's assuming an executive as well as a legislative role, but it gives the advantage of making definite that a well backed, determined effort was organized and at work, to break up the established and well progressed plan under which two races were living together with increasing mutual trust and confidence and the majority of both being contented with the steady improvement being carried on in their relationship.

In his letter to President Eisenhower, Mr. Carleton Putnam, of Boston, expresses this idea in the following words:

"Indeed, there now seems little doubt that the Court's recent decision has set back the cause of the Negro in the South by a generation. He may force his way into white schools, but he will not force his way into white hearts nor earn the respect he seeks. What evolution was slowly and wisely achieving, revolution has now arrested, and the trail of bitterness will lead far."

[From the Ploche (Nev.) Record, Jan. 1, 1959]

THE FLIGHT OF OUR CONSTITUTIONAL SYSTEM OF GOVERNMENT

The Constitution of the United States has achieved world recognition for having established individual personal freedom and opportunity to an extent never before even approached in the history of governments. There is now a sudden realization that there has come about a change.

This change is not the result of laws drafted by representatives of the people as authorized by the Constitution. In certain instances Congress has delegated its duties, without the constitutional right or authority to do so, to specially selected bodies of men who are not responsible to and not expressive of, the will or the wishes of the people. Another case is where the Supreme Court steps out of its authorized field and asserts governmental powers to back up invalid orders which are nothing more than the opinions of men without authority.

The United States as a whole faces such a state of affairs in various large sections of the Nation that we are brought to a realization of a far-reaching fact.

That fact is that the Revolutionary War, whereunder the colonies gained their independence, was fought to remedy what had become an unbearable evil, but more important than that to establish the remedy as a matter of principle that "the right to govern rests upon the consent of the governed."

This principle was the basis of the agreement among the colonies, who then became separate and independent nations, a pact called the Constitution of the United States. The purpose of that agreement was three-

fold (1) to assign certain well defined and strictly limited powers to a central agency called the Federal Government and (2) more important to reserve, to the nations which formed the federation, complete authority and control of their own governments, called State governments. (3) Most important of all to assure the prevention of any expansion of, or Federal encroachment on, the rights, reserved by the States.

THE SITUATION IN ITS GENERAL ASPECT

We now find productive industry in the States in a critical condition. Agriculture dependent upon taxpayers buying their crops to be wasted, mining industry closed down to allow imports of metals so as to export manufactured products thus to overcome the effects of depressed world commerce and now we add to that the sudden realization that in certain large sections of the Nation the educational system is in a critical state because of the resistance of the people to the enforcement of laws not of their own making or approval.

We now wake up to the fact that there has been a growing encroachment upon all freedom of action by the individual citizen in all sections of the country, especially upon the businessman who is not a part of the large and generally secretly controlled business organizations, so that it is difficult for the ordinary businessman to maintain himself in business.

On a studied reflection this sad and widespread state of affairs all springs out of the administration of bureaucratically made and enforced laws, all of which are in violation of the spirit and intent and definite wording of the Constitution.

A LESSON FROM HISTORY

The Southern States seem to be bewildered as to their rights and their powers, almost exactly as they seemed to be in 1861. Instead of taking a legal position, one that was legally correct, and putting it up to the Federal Government to make the next move, history has repeated itself and they have resorted to hastily considered, and what now appears to be ill-advised, counter-coercive measures.

In 1861 South Carolina could have permitted the forts to be reinforced and asserted its legal position. Its reply to the President could have included criticism for threats to use force and for the improper conduct to its commissioners, thus pointing to a moral basis for a world public opinion, while leaving their rights to be determined by law, not by force.

Up to that time the legal position of South Carolina was unassailable. Its correctness did not depend upon the occupancy of the forts. Reinforcing the forts, and the threats to use force, was a trap to bring about the war, just as Mr. Toombs said it was at the Cabinet meeting where the ill-fated decision was made.

The challenge from Washington to use force could have been declined, so as to rest South Carolina's case on the legal construction of a contract duly signed by the other States wherein all had agreed to South Carolina's reserved right to withdraw from the compact.

THE VIRGINIA POSITION

In previous discussions in our editorial column, the *Pioche Record* has commented on the work done to evolve plans for action. The essential matter is to assert the superior governmental position of the State, as against the inferior position of the Federal Government, which entirely lacks all governmental powers except by assignment from the States of certain definitely defined and strictly limited powers. It is generally considered that to yield on this matter of principle would be fatal to our constitutional form of government.

It is the position of the States that these limits fixed by the Constitution, have been

exceeded in the rulings of the Federal courts in the school cases. Chief Justice Marshall is authority (if authority is needed) for the proposition that a decree of the Supreme Court, where its action is beyond its authority, is void. But the Executive in sending in Armed Forces, to enforce such an order raises the question of what action should be taken by the State in these unusual circumstances. First, it is necessary that the unauthorized nature of the Court's ruling is not merely the opinion of men, but is the ruling of the government of the objecting State.

In the present case the report of the Virginia Commission on Constitutional Government points to a correct legal position and the State could occupy it. The report is a clear analysis and statement of the law. But this commission has not constitutional authority to speak for the State, and this must be borne in mind. The commission was empowered to make a study and report to the legislature but as yet the legislature has not taken proper action as indicated in the report. It is merely a first step. It lacks the constitutional power to speak just as the Supreme Court is lacking in constitutional power in what it has decided and decreed. However, the invalid order of the Supreme Court remains in effect until the legislature acts as there is no other authority under our law that can take this step except the State Government acting through its legislature.

But based on the same legal grounds, as so well analyzed in this commission's report, the State legislature is entirely competent as the lawmaking body, to declare as a matter of law, that the Brown case decision is beyond the constitutional authority of the Supreme Court and to declare it to be null, void, and of no effect, and not the law within the jurisdiction of the State of Virginia.

NOT A VALID LAW BUT AN INVALID ASSUMPTION OF POWER

This could be placed on the basis that the Court's order is legislative and not judicial, one of the points clearly stated in the report; or it could be placed on the basis that "equal protection of the law" is language that cannot be stretched so far as to imply the meaning of "equal education and social opportunities"—a moral and administrative impossibility. Also it conflicts with the strict interpretation of language required by the law in such a case.

The Supreme Court has gone far beyond this strict construction of language, which the law requires in this case. Even the prior decision of 1896 as a matter of legal construction went too far. The obvious intent expressed by the language was exceeded. That decision need not be considered now, except as far as the commission has used it, to show it to be a legislative act to change, after 50 years, the established law under the prior decision. Enlarging the intent carried by the language used, after 50 years, is clearly legislative in its essence, but to extend the meaning any further than the "separate but equal" decision which has been carried out for 50 years, is a usurpation of power that calls for a halt or else there will, from now on, be no limit to what powers the Court may assume.

First let us consider this question: Where Virginia has a law being put into effect and a group of men try to forcibly obstruct the law, what government but Virginia can protect the enforcement of its law? And if the opposition to this law enforcement asserts the authority of another government, who else but Virginia can inquire into, and determine, the validity of this claimed foreign authority?

If the Virginia Legislature declared the action of the Federal courts, under the Brown case decision, void as lacking a constitutional foundation, what higher law is available? The Supreme Court certainly cannot properly

be the arbiter of a question involving the limits of its own powers or its own actions, even if such a power had been given it, which it most certainly has not.

THE QUESTION OF EXECUTIVE INTERVENTION

The President has been given no authority either to pass on the constitutional validity of the Court's orders or to obstruct the enforcement by Virginia of its laws. And most assuredly an unconstitutional order of a Federal court does not increase his authority.

If Virginia officially declared the Court's decision to be unconstitutional and void within that State's jurisdiction, and the President has been given no constitutional power to decide the question, then as far as the jurisdiction of Virginia is concerned when agents of the President enter the State they are subject to its law.

The President's oath requires him to uphold the Constitution, not the Supreme Court. Where is there any power given to the Federal Government, under the Constitution, in the enforcement of its laws to override the State, or to prevent the State, in this case, from acting under its powers expressly reserved under the Constitution for just such an emergency? Or to inhibit the States in any other action except what is specifically assigned to the agency Government under a strict, not liberal, construction of the meaning of the language used and intended? The answer is very clear. There is no such power accorded to any branch of the agency Government.

UNAUTHORIZED AND ILLEGAL TYRANNICAL POWERS

Next let us take this question: Assuming that the Court is guilty of a brazen assumption of authority in an offensive use of tyrannical power greater than George III ever used, which may be considered by some a description which fits this case, is it to be assumed there is no remedy? If there is, what protection other than this is given to the State?

Is it to be assumed that the far-seeing, astute framers of this plan for an agency Government with rigidly limited authority, have neglected to provide protection from what the Revolutionary War was fought to remedy? Are we to assume that within the scrupulously guarded plan to prevent the agency Government from becoming tyrannical and oppressive, there was no intent that the reserved-power-provision could be used to protect the event where the Supreme Court would run amuck?

This Court is composed of political appointees, with life tenure in office. It is the one agency of the Government the more easily and completely to be taken into radical hands, which might use its powers as some have asserted it now intends to do, to destroy the very safeguards the founders of this agency Government were seeking to establish. Is it to be assumed that the framers of, and the signatory nations to, our Constitution were asleep on this crucial point of danger?

Is it logical under the Constitution for the Virginia Legislature as the lawmaking power of the State, to declare the orders of the Court ultra vires if such is the fact and that it is not valid within the jurisdiction of the State? Such declaratory action of the legislature must be within the framework of the powers specifically reserved, since such procedure is the only constitutional power available when it may become necessary to curb a tyrannical, arbitrary, and oppressive assertion of an entirely unauthorized, assumption of power, on the part of the Supreme Court. Such a contingency must have been foreseen and who else but the State is in a position to curb the unauthorized power of the Court, when it reaches into the jurisdiction of the particular State whose rights are affected?

In such a situation what is the position of the U.S. Government? The three departments of the created Federal agency, are

made equal and independent. Each is deprived of the required power over the other. The States are therefore left as the only power to correct such abuses and the States as governments are given full power under the reserved powers provision. The United States Congress has been given no such authority. The President has been given no such power while on the other hand the States have reserved all powers not specifically granted.

PROTECTION IS PROVIDED IN A BLANKET PROVISION

In drafting the Constitution the arrangement and limitations of powers are so manifestly intended to assuredly, and without any question, prevent governmental tyranny, and the intent is so evident to assure the freedom of the signatory States from any such usurped powers, there must be intended to give a means of protection. In such a state of affairs it is heart sickening to read of what is being endured by the schoolchildren in many of our States under the makeshift, improvised arrangements for the closing of their schools, while they submit to their State being prevented from carrying out its own laws, as directed by its own State constitution. Taxpayers have provided the money, other extensive provisions have been made, instructors are under contract and all is chaos because of the invalid order of a Court and the failure of the State to take the legal position provided for it under the Constitution.

If the State, through its legislative powers formally approves and adopts the conclusion of law already reached by the Virginia Commission on Constitutional Government, that makes it the law of the State. It then becomes a lawful act of the legislature, that this Supreme Court ruling is not based on constitutional authority, that it is ultra vires, and for that reason is declared to be not valid and therefore not the law within this jurisdiction of the State. It is open to the State to take that step. The State can declare what is the law in the State and what is not the law as long as what they declare is not in conflict with the Constitution.

If the State does this without transgressing the powers it has conceded to the Central Government under and by virtue of the Constitution, its position is unassailable. Then let it become the Federal Government's next move.

A LIMITED FEDERAL POWER MUST HONOR ITS LEGAL LIMITS

It is to be assumed it will not move lawlessly or so as to interfere with the enforcement of Virginia laws after what is the law within the State has been made definite. One lawful course would be to convince the Virginia Legislature that the Brown case decision conformed to constitutional requirements and is a valid decision. The other would be to amend the Constitution and have it conform to their forced construction and so-called liberal interpretation.

It is not to be assumed that the Executive, acting under his oath of office, will proceed otherwise than by authority which has been given to him under the Constitution and within the required strict construction of the language used and that is therefore binding on the State. And in the State it must recognize that we have there a government of total powers, subject only to its being the source of such authority that was granted, and what authority had been granted, to the Federal Government. These are the considerations which are required of the President under his oath of office, for the violation of which he is subject to impeachment.

[From the Ploche (Nev.) Record, Feb. 5, 1959]

MASSIVE RESISTANCE LIQUIDATED

Massive resistance is the name given to an effort made by the State of Virginia to

run its own public school system. This so-called massive resistance was a house built upon a foundation of the sands-of-uncertainty. This foundation was washed away by recent decisions of the courts, a result which from the standpoint of law, was inevitable from the beginning.

In the situation which results from uncertainty as to what is now the law, there is in front of the State of Virginia the immediate task of replacing uncertainty with certainty. When the recent, superbly eloquent speech of the Governor of that great State was delivered, there was one outstanding question which stood before him and before the State. That one question was: What is the law?

A SUPREME COURT RULING MAY OR MAY NOT BE THE LAW OF THE LAND

This foundation on which the complicated structure of massive resistance had been built, could not be classed as established law. On the other hand if the decision in the Brown case was a valid and constitutionally authorized decision of the Supreme Court, it was the law. But if the ruling in the Brown case was not a lawful decision but was the unauthorized opinion of members of the Court, who had disregarded constitutional requirements, then it was not a ruling of the Supreme Court and it is not the law.

In the present critical situation the question, whether the Brown ruling was a decision of the Supreme Court, or the unauthorized opinion of nine men, stands out as one question to appropriately occupy a position somewhere within the bounds of the Governor's eloquent and admirable discussion with its stirring appeal to the people of his State. But the question was not there, and it was conspicuous for its absence.

Until the answer to this question is removed from the realm of uncertainty everything relating to the operation of State schools will be clouded with doubt.

The effort to modify the effect of constitutional law by State statutes now must be abandoned. The question of what is constitutional law, in the realm of operating State schools, is automatically given the right-of-way and the answer to that question can and no doubt will be made definite, by States whose laws are being interfered with, among which States Virginia has assumed leadership.

THE VIRGINIA COMMISSION REPORT

The Virginia Legislature has appointed a Commission on Constitutional Government to help resolve this very question, and that appointed commission has made a study of the Brown case decision. It has made its report which finds that the Court's action was "ultra vires" which is to say that the Court exceeded the constitutional limits of its authority. If this is in accord with the facts, then the Brown ruling is invalid. It is not a decision of the Supreme Court. But such a finding must be declared by the government of a member State whose laws are brought in question by the Court's orders.

The government of the State of Virginia has so far taken no action in approval of the conclusion reached in the report of its Commission. But if the government of Virginia, speaking for the State, after a full investigation and study of the facts resolves this question and reaches a conclusion as to whether the Court was acting within its constitutional requirements, then Virginia, as a State, can hand down its verdict of what is and what is not the law in that State, insofar as its laws are affected by the invalid order of the Supreme Court and all orders of Federal courts which are offshoots from this ruling in the Brown case. In this formal way it can be made definite that the men who are members of the Court, when they are not acting within the authority re-

quired for its rulings, cannot issue orders that have the effect of law in that State.

OUR CONSTITUTION—IT MUST BE PRESERVED

Many other States besides the South are interested in preserving their heritage of freedom from tyranny, which has been assured to them under the Constitution of the United States, and if it can be preserved and perpetuated.

While these other States are, many of them onlookers in this particular decision, as affecting local school problems, yet they are concerned that their liberty of action in other walks of life, are kept free from the unconstitutional dictatorship of the members of a court when they speak their personal conclusions, outside of the limits of their authority, or when they act beyond the restrictions imposed upon them by the Constitution.

It is of interest to these States that Virginia will now proceed to use its constitutional reserved powers and in line with its deliberate duty, to the end that if it finds the clear fact to be that the Court has acted out of bounds, as has been reported by its Commission on Constitutional Government, that the consequent resulting invalidity of the Court's procedure, will be declared in a way to carry the proper restraint; on the principle that our Constitution must be preserved and only the States have that responsibility and only the States have been given the power, to act to that accomplishment—and on the principle that eternal vigilance is the price of liberty.

Virginia has contributed more than any other State to establishing our constitutional form of Government and now it falls to the lot of Virginia to take the steps that will save it from those who would destroy it.

[From the Ploche (Nev.) Record, Mar. 5, 1959]

WHEN GOVERNMENTS RUN AMUCK

Is appropriate thought being given to this trend in our country today, to break away from restraining influences and run wild on tangent orbits?

The spread of this trend to our teenagers has built up a staggering record of juvenile crime which is but one phase in a general trend.

If governments break their halts of restraint and we find them running wild, can this be considered less seriously especially when such breaking away from the moorings of security is most certainly drifting us into the realm of chaos?

Our notion is new; we have not had training to catch and tame this kind of runaway, but as we review our records we can find that the wise and far-seeing founders of our form of government, have not neglected to provide the way for such an event to be handled. And these same records show that those Founding Fathers have discussed at length, among themselves, the danger of there being unloosed this very destructive force which now must be dealt with.

In his recent address to his legislature the Governor of Virginia helps bring before our view a strange combination of these broken halts.

DISREGARD OF RESTRAINT

In stirring language he has brought down his criticism on one branch of his Virginia government, namely the Supreme Court of the United States—a branch of government constituted by the government of Virginia in agreement with other governments, as an agency for the performance of a definite and limited role, and for that role only. The Governor arraigns the members of this Court so constituted, for breaking the halter which has tied them and strictly limited their power.

He charges them with wrongfully appropriating legislative powers which have not been given to them. While at the same time

he himself proceeds to break the halter which ties him to the executive post of his government. He proceeds to appropriate to himself the powers which have been allotted to the legislature of his State.

He goes ahead, and lays down on the line, what course of action his State will take, when the determination of that problem is strictly a matter for the legislative branch of his government to attend to. The Governor himself being limited, as far as his office is concerned, to the equally strict role of recommending to the legislature what in his opinion should be their course of action, and the veto power if he wishes to use it.

LEGISLATIVE ACTION

The legislative branch of the government has already directed its attention to the problem under discussion. They have gone so far as to appoint a Commission on Constitutional Government to chart out an analysis of the law bearing on the situation. This commission has made a report declaring reasons why the Supreme Court's decision should not be recognized as the law in Virginia.

Further proceedings along these lines were held up by certain proposed indirect lines of action which were not properly founded on established law, and for that reason they have been knocked out by decisions of the courts. This leaves an unfortunate but inevitable mass of debris in the wreckage of the plan, but the legislature is thereby given a free hand to go ahead with proceedings, as a follow-up of this report of the Commission on Constitutional Government, and discontinue futile efforts to oppose constitutional law by legislative enactments.

AUTHORITATIVE PROCEDURE

It is the problem of the legislature, not the Governor, to declare what the law is as far as the jurisdiction of Virginia is concerned. It is for the legislature, not the Governor to determine the question as to the invalidity of actions of the members of the Supreme Court, and whether their actions were beyond the powers granted to them as a court, on which question its Commission has already made its report.

It is for the legislature to say what is the effect on Virginia law of any action which has been taken by members of the Supreme Court wherein they have exceeded their constitutional powers and to say what is the law of Virginia where such a question is to be resolved.

If it is assumed as true, or established as a fact, that a ruling of the U.S. Supreme Court is beyond its granted powers, or if it is claimed on high authority that the Court ruling is unconstitutional, you only have as a result a difference of opinion.

The invalid ruling of the Court must stand until a constitutional power speaks, which is closer to the source of authority than the Supreme Court. But if after a proper investigation of the facts such a source of constitutional power finds, and lawfully declares that the order because of lack of authority was not an order of the Court, then in that event the act is merely the order of members of the Court, without constitutional power.

If this should be the government of a member State which takes such action then, within the jurisdiction of that State, the higher legal authority is the government of the State and it is the final arbiter of what is the law in that State. Then the illegal action of the members of the Court become, in that jurisdiction a nullity. But the Governor of a State is not the government of that State. What he declares to be the effect of the Court's ruling is merely his personal opinion.

[From the Ploche (Nev.) Record, Apr. 9, 1959]

THE CONSTITUTION AND A STRANGE PERPLEXITY

The Virginia Assembly will meet in what some consider to be the most critical mo-

ment in the history of that State. If the Constitution is to be altered from now on, without the consent of the people, it is also of concern to all of the States.

The meeting stands as if it were at the pass of Thermopylae. It is standing alone, disputing the progressive movement of what the Governor of that State has classed as "a conspiracy to destroy the Constitution of the United States." And this movement must be stopped at this point or the flood gates will be opened.

The question that is now before the Virginia Assembly, reduced to definite terms may be thus stated:

(a) Is the ruling in the Brown case a valid ruling of the Supreme Court or is it an unauthorized assumption of authority on the part of the members of the Court?

(b) If the Virginia Government finds the fact to be as stated in its Commission on Constitutional Government's report, that the Court was not acting within the bounds of its authority, and that the Constitution did not grant to the Supreme Court the authority assumed by its members, in their decision in the Brown Case, what is the law in such a situation?

(c) If the Government of Virginia, by law duly enacted, in proper form, declares the ruling in the Brown case not constitutionally authorized, and not a lawful act of the Supreme Court, and for that reason not the law within the jurisdiction of the Government of Virginia, what authority has been conferred upon the Supreme Court to override this action of the Virginia Government?

(d) What is the importance of intent in construing the meaning of the Constitution? Is it the law that the intent, of the parties who drafted and parties who approved the language used, must govern its construction, and is the Supreme Court bound by this law? Did the Supreme Court follow that law in the Brown decision?

(e) Did the States who are parties to the Constitution, intend to give to the Court, under any assumed pretext, the power to regulate their schools or to make rulings that have the effect of laws, which if submitted to their legislatures, could not gain the approval of the representatives of the people, or did the states give the Court power to otherwise negate the principle, established by the American Revolution, that governments derive their powers to govern from the consent of those governed?

These questions comprise the matters that must be handled. But in front of these questions there is another matter for solution. Who is to unscramble the eggs? A hopeless confusion arises from mixing two problems together which first must be separated in order for either to be solved.

THE CART BEFORE THE HORSE

It has been overlooked, due to its emotional element, that the question, whether it is good or bad to enforce segregated schools upon an unwilling people is not the primary issue. The issue of who is to decide the question comes first. It is not a question at this stage, how the schools are to be managed. The first question is who will do the managing. If the State authorities are managing the schools and at the same time the Federal authorities are managing the schools, we have a hopeless entanglement. Let the gentleman who has come up and taken the front seat be ushered back to the seat to which his ticket entitles him, and we can handle the matter. In that simile the gentleman taking the wrong seat is an employee, or any department of the Federal Government, the master who issued the ticket being the State, and the usher being the legislature. The immediate question being the examination of the ticket, the legislature has already taken preliminary action, in the report of its commission, but

then the matter was dropped to experiment with State authority and Federal authority both at the same time, trying to do the same thing; namely, to dictate as to the management of the schools, and both have been acting unlawfully with resulting entanglements and confusion.

According to the report of its duly appointed Commission on Constitutional Government there is no valid decision of the Supreme Court on this subject, for the reason that constitutional authority was lacking. Its rulings were ultra vires. If this is the law, the Supreme Court is not entitled to the position it has assumed.

If this can be followed up by lawful proceedings, and the government of Virginia can confirm the conclusion of its Commission on Constitutional Government, and after a full investigation of the facts declare the ruling in the Brown case to be unconstitutional, and not valid, then in that State at least there can, from then on, be no confusion, as to what is the law affecting the operation of its schools. What the Court attempts to do, beyond its rights under the Constitution, is invalid. That is the law, but it must be made definite what is the status of the matter, by proper action of a source from which the authority of the Supreme Court was originally derived.

WHAT IS THE CONSTITUTION

One unfortunate element in correcting this situation is that the people of the country are confused in their understanding. They have been misled by the information generally current as to the powers of the Federal Government. What we have to deal with is not a question of State rights so much as a question of what are the limitations to Federal power. The State rights are unlimited excepting those it has surrendered. The Federal Government has no rights at all except those that have been given to it.

It is a question of making a study of the Constitution. What is the Constitution? Who constituted it, for what purpose, and what are the ends to be achieved? Who is made the boss? Let us take a closeup look at what is the Constitution of the United States.

The Constitution is a written agreement, among separate and independent nations to whom that status was given, some years before, under the terms of the treaty of peace at the end of the Revolutionary War. In order to consolidate some of the burden of government they agreed on a plan to appoint an agency Government.

By a treaty arrangement they thus constituted three separate agencies, each being made independent of the other, and to each is granted a limited authority to perform a certain well-defined part of their national functions, no more and no less. All authority not specifically granted was specifically reserved.

Also employees of the agency Government were to be required to take an oath of office to protect and defend this agreement which defines and limits their powers, with the hope that it would not be necessary to use the reserved powers in order to gain the intended protection. But before signing the agreement, at the insistence of the State of Virginia, they made sure that there could be no uncertainty as to the intent, that all powers not granted were reserved to the parties to the agreement.

It is the present use of this reservation which is now a matter for the attention of the assembled representatives of the people of the State, and it is particularly concerned with the point that the Supreme Court has no authority beyond what the State of Virginia has intended to give it. All the authority and all the power the Supreme Court can claim to exercise, must as a matter of law, be clearly stated in papers signed by the State of Virginia, and it is the law that

the papers can only carry the powers intended at the time. While Virginia has acted in agreement with other governments in giving the authority granted, that does not change or enlarge the authority.

THE PEOPLE SPEAK

The State's leaders must assume the responsibility for this simple and necessary question being so mixed up as to become almost hopelessly confused, and this confusion must now be cleared up if this meeting of the assembly is to measure up to the requirements of the people.

The recent unprecedented meeting on the Richmond Capitol grounds of nearly 8,000 orderly but seriously intending citizens, volunteering to come from all parts of the State, with a designated spokesman to express their views, left no doubt of the seriousness of their intent that governments must obey the law.

The legislature will have before it two reports. The report of its especially delegated Commission on Constitutional Government which report declares the U.S. Supreme Court in the case of *Brown v. The School Board* was out of constitutional bounds in its proceedings and consequently its ruling was ultra vires.

The assembly will also have a report of another commission selected by the Governor of that State. The Governor has taken the position of dealing with and acceding to this same ruling of the Supreme Court which the Commission on Constitutional Government has reported to be illegal. The people of the State have most positively refused to be governed by it and if the presently assembled government agrees with the Commission on Constitutional Government and declares the Court's ruling to be not constitutionally founded and therefore not the law within the jurisdiction, then in that case the proceedings proposed by the Governor will not be necessary. The matters will be otherwise taken care of.

While the commission appointed by the assembly has given its reasons why this ruling is beyond the Court's constitutional authority and therefore void, yet this does not preclude further investigation by the assembly before adopting the report. A thorough overhauling of this entire matter, by so dignified a body as the Virginia Legislature, would be a milestone in the progress in developing the American form of Government.

CONSPIRACY TO DESTROY THE CONSTITUTION

The Governor has said that his State is "battered by the unholy alliance of a conspiracy to destroy the Constitution." And yet he proposes new legislation which in effect assents to the validity of this same ruling and in a measure gives effect to it. In reference to this same ruling of the Supreme Court the Governor has said, "I saw the Court ignore the Constitution, cast aside all precedents, Federal and State, and judicially legislate the ideology of a foreign socialist into the Constitution."

In this amazing discord and confusion it is most fortunate that one thing stands out with clarity, and that is the law which has already been established and which must guide the legislature and afford a foundation for its action. The law is the controlling factor in this critical affair, critical to their State, critical to what in the Governor's charge is a "conspiracy to destroy the Constitution," and of course of concern to all of the States which wish to see the Supreme Court deterred from roaming in the green pastures of usurped autocratic power. The law is what will govern if the law is applied.

APPLICATION OF THE LAW TO QUESTIONS UNDER CONSIDERATION

Quoting Chief Justice John Marshall in the leading and often quoted case of *Marbury v. Madison*, 5 U.S. 179:

"It is apparent that the framers of the Constitution contemplated that instrument

as a rule for the government of courts as well as the legislature. * * * A law repugnant to the Constitution is void, and the courts as well as other departments are bound by that instrument."

Alexander Hamilton was one of the leaders among the founders of the Constitution. In Federalist Paper No. 33, he affords highest authority on the question of what was the intent of the framers of the Constitution on this point. Mr. Hamilton says: things that are done in "violation of constitutionally defined authority will be merely acts of usurpation, and will be deserved to be treated as such."

These two authorities alone would outweigh the basis for the Court's decision in the *Brown* case which mainly hinged on its reference in footnote 11 to its opinion. The authority there cited is a patently superficial foreign writer on social theories. It has nothing to say about the issue before the Court which is to interpret the intended meaning of the 14th amendment.

SUPREME COURT'S CITED AUTHORITY

The author, who is cited as authority to back up the decision of the Court, has this to say about the Constitution: "The American Constitution is in many respects impractical and ill suited for modern conditions." If the author can convince the Court of the correctness of his conclusion, which would mean that the Constitution should be abandoned in favor of a Communist regime from which it is our main defense, the Court could recommend amendments to the Constitution, but hardly change it to suit the author, without the approval of the people, or hand down a decision to that effect.

The Virginia government is justified in rejecting the Court's conclusion as the law for interpreting the Constitution, as far as it is based on footnote 11 in its decision. On the other hand the State is justified in ruling that Chief Justice Marshall and Alexander Hamilton are better authorities for determining what was the intent of that document and how the authority of the Court is limited in construing it.

It would be helpful to the legislature if the attorneys would furnish, for their consideration, extracts from the Court's rulings which would give a legal basis for changing the interpretation of the language "separate but equal," in the 1896 opinion of the Court to conform with the views of the writers quoted, who express disapproval of the Constitution as the basic law.

This would give the assembly a better opportunity for an analysis of authorities on which the decision was based, and disclose its bearing on the proceedings of the Court, being within the authority conferred upon it, by the Constitution.

THE LEGAL EFFECT OF INTENT

What is the legal effect if the Court, in reaching its decision, has flagrantly ignored and made no effort to determine the intent of the signatory parties, at the time of their agreeing to the Constitution or its amendments. What is the importance of "intent" as a matter of law?

The law on this question is very clearly expressed in the U.S. Supreme Court's decision reported in (199 U.S. 488): "The Constitution is a written instrument. As such its meaning does not alter. That which it meant when adopted it means now. * * * Those things which are within its grants of power, as those grants were understood when made, are still within them, those things not within them remain still excluded."

Quoting from the decision of Chief Justice John Marshall in *Gibson v. Ogden*, 9 Wheat 199:

"As men whose intentions require no concealment, generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots

who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said."

THE PROBLEM BRIEFLY STATED

Divested of all its trappings, the situation in hand can be thus plainly stated:

(a) The Supreme Court has no power except what the State of Virginia intended to confer upon it.

(b) The State of Virginia has never intended to give the power to the Supreme Court to regulate its schools.

(c) The Supreme Court by a forced construction of words cannot override the principle of local self-government and home rule for which the Revolutionary War was fought and won.

(d) It must be kept in mind that the State of Virginia created the Supreme Court and limited its authority, requiring an oath of office that insures its integrity. Any act of the Court, in excess of authority authorized, is of necessity unauthorized and void, and the source from which the authority is given must be also the ultimate judge of its performance. Otherwise it is not a rule of law that has been established, but a rule of men—not a republic but an oligarchy.

THREAT OF FORCE

The Governor of Virginia takes the position that he cannot overthrow or negate "the overriding power of the Federal Government."

This statement overlooks that the Federal Government must be given the authority, before it can make use of any power. No power can be used to oppose the State in any matter where the Federal Government lacks constitutional authority. What the Federal Government bases its rights on, when it attempts to coerce the State, must be within the clear provisions of the Constitution as intended by the signatory parties at the time.

It is not a question of the overriding power of the Federal Government, rather it is a question of what is the right of the Federal Government, and whether the State has ever conceded that right. The power question beclouds the present issue. The power of the Federal Government is entirely irrelevant to the problem under consideration. It is a question of the right of the Supreme Court not the power of the Government.

The founders of our Government have had their work brushed aside if power is substituted for right, and when the rule of men is substituted for the rule of law, it falls to our lot to see that this is not done. The military might that has been allowed the Federal Government has no use or application here. The task is rather that of defining and making sure what is the law, and using the powers reserved to the States so that the law may be so defined as to require its being given due respect by all agencies of the law. Had the Legislature of Arkansas, with the Governor's approval, invalidated the Federal ruling as not the law in that State, the Executive would not have had constitutional authority to defy the law of Arkansas by sending in troops.

This question may be asked, after the State government has made definite by the required proceedings, what is the law within its jurisdiction, what authority does the Constitution confer upon the executive department of the Federal Government to obstruct the lawful functions of the State? Under what provision of the Constitution would the executive department be acting if it interfered with the State in the enforcement of its laws?

Unless the Constitution has been abandoned, any department of the Federal Government dealing with the State could be required to answer this question.

[From the Ploche (Nev.) Record, Apr. 23, 1959]

QUO VADIS, VIRGINIA?

With the Virginia Legislature in session the news has presented the silent aspect. It is claimed the main issue of the Revolutionary War is at stake, but throughout the Nation who knows what has been going on in Richmond?

The Governor of the State just before calling this special session of his legislators, in a special nationwide TV address, gave his listeners to understand that there was a serious question of constitutional law which needed the attention of his lawmakers.

He advanced very good reasons, and advanced them with force and eloquence, why the ruling of the Supreme Court which had closed the schools of his State, entrained a tyrannical usurpation of power, and had overreached its constitutional limits of authority.

Because of the grave nature of this change and far-reaching principles involved, he announced that in such a situation there could be no compromise.

When the legislature assembled there was another address by the Governor. In it he said:

"I am not aware of any crisis in the history of Virginia more grave nor any emergency creating a more impelling necessity for the convening of the representatives of our people.

"Encompassed by the iron will of arrogant power, buffeted upon the storms of an uneven contest, pierced with the daggers of political expediency and battered by the unholy alliance of a conspiracy to destroy the Constitution, Virginia, true to the faith of the Founding Fathers' heritage, must never recede in this struggle to preserve her rights nor suffer her voice to be stifled in the councils of the Nation."

It may be there are some in our American citizenry who are not particularly interested in preserving the liberty of person and property that once was assured by their Constitution. For them we would not speak. But for those of us who feel that these once assured rights to freedom, have been whittled away, and wish to see that what is left is preserved, the result of the proceedings in Richmond are of real concern. They will direct our future.

A CHANGE OF FRONT

The Virginia Assembly has met as scheduled. But from the daily national press the public would not gather that, within their range of the news, a grave constitutional crisis was there being dealt with.

The Governor himself selected a group from the assembly members, as his working staff. Why his legislature is not left to select their own commission does not appear. But the procedure is being directed by the Governor. The matters selected by his leadership are to be given short shrift and rushed through. Time has become the important element, as it was in Washington in 1933-34 when the Constitution was forgotten, foreign commerce destroyed, the groundwork was laid for our now present imponderable national debt and the destruction of our wealth-producing industries.

The defense of the people from the transgressions upon their right of self-government, so eloquently promised on January 20th, suddenly is shifted over and the subject is to be shunned. In their place questions will have consideration such as the means for transporting what children to what schools; tuition grants to children who might prefer not to attend schools provided by law; whether they are to be paid by the State or by the localities; modification of statutes providing for liens on buildings; many complicated and strongly contested details of school administration. All is based

on the assumption that there is to be a surrender without the public knowledge. No time being given for debate or discussion on the matter of principle, or whether constitutional limits have been disregarded by the courts or whether their proceedings have the validity of law. Darkness still prevails on the question, What is the law?

THE QUESTION AND THE ANSWER

In his address on opening the assembly meeting the Governor said:

"I saw the Court ignore the Constitution, cast aside all precedents, Federal and State and judicially legislate the ideology of a foreign Socialist into the Constitution, outside of the record, with no opportunity for a hearing or cross-examination."

He also said: "If any of them know the way through the dark maze of judicial aberration and constitutional exploitation, I call upon them to shed the light for which Virginia stands in dire need in this, her dark and agonizing hour. No fair-minded person would be so unreasonable as to seek to hold me responsible for failure to exercise powers which the State is powerless to bestow."

In answer to this, if it had been permitted for the proceedings to provide for it, members of the Virginia Commission for Constitutional Government could have proposed the answer to this question by a resolution giving effect to the findings of the previously appointed commission of the legislature. The simple answer is a resolution declaring the ruling of the Supreme Court not within its constitutional authority and therefore void and not the law within the jurisdiction of the State, which action by the legislature, when approved by the Governor would have ended all doubt as to what was the law in Virginia on the school question.

But in the present stage of the proceedings, no reverberations have come through of any debates on the question of the Court's constitutional powers or the tyranny of the orders of the Court. No Patrick Henry has revived the "give me liberty or give me death," memories. Instead we see the planned details of what appears to be the arrangements of a surrender.

When the Governor's program was rushed to completion and ready to be sent to the proper committee, it appeared that sure defeat was awaiting it by that route. The committee was then bypassed. The vote of the senate as a committee of the whole was used, as a strategy move, to save its defeat. A most unique, in fact an unprecedented move to override the will of the people's established organization.

The people wish the constitutional question met and disposed of. The Governor and his followers, in an attitude of defiance, suddenly switched the plan of action to what would accord with the Supreme Court being given the right of usurpation which once they so eloquently condemned.

In exchange they gain the planning of such matters as the handling of tuition grants and a number of kindred questions, all of them based on conceding to the Court the right to invade areas of power, which heretofore have been strictly denied them, and which would pave the way to changing over from a Government of the people to a new form of autocratic dictatorship.

AN OUTSTANDING EVENT

Despite the scarcity of space given these events in the metropolitan press an incident in the history of our Nation, known to those present, throws considerable light on what is going on in this Virginia constitutional crisis. On March 31 there appeared in the capitol grounds at Richmond a voluntary crusade of thousands of citizens from all parts of the State. More than 5,000 citizens assembled, with an orderly but determined purpose, to speak with the Gover-

nor of the State and with the members of the legislature, in a face-to-face assembly. The Governor did not appear. He had other appointments. But the members of the assembly seated on the front steps of the capitol building heard what the citizenry had to say speaking to them through their well-selected spokesman.

In this extraordinary if not unprecedented procedure, these representatives of the people of the State, presented with extreme courtesy, their plainly-put demand, that the constitutional rights of the people must be defended and not surrendered. At the same time they reminded the legislators that they were speaking for the people to their elected representatives.

The speaker, Mr. Edward J. Silverman of Blackstone, Va., after a graceful introduction by the chairman of the newly organized "Bill of Rights Crusade," sponsored by the Virginia Committee for Constitutional Government, and after a short but impressive opening prayer, proceeded to address himself to the absent Governor and to the members of the assembled Virginia Legislature.

THE PEOPLE SPEAK

With dignity and directness the Governor and the legislators were brought to a realization of the serious nature of the occasion.

Speaking of the Governor, he said:

"He is a great orator. He is a great citizen of Virginia. He has been honored many times by his fellow Virginians. But his voice no longer rings out against Federal tyranny, and it appears that he wishes this legislative body to surrender and submit to the ruthless might of Washington.

"Virginians have always loved their Governors. Rare is it that a Virginia Governor has had to face such a demonstration as this—demonstration by the people who elected him because they feel now he has surrendered his State. Is not this crusade the proof needed that the people of Virginia still run their government?"

Speaking to the legislators, he said:

"And so, we are now turning to you, the elected representatives to the legislative branch of our government. You are our only remaining line of defense.

"We appeal to you to give us the leadership and statesmanship necessary to lead us through this dark crisis and to make the long, hard sacrifices necessary to preserve our liberties and the sovereignty of our Commonwealth.

"We do not believe that Virginia, in this grave hour, is without that statesmanship which has brought her through the trials of the centuries.

"You must snatch up the torch of liberty from where the executive branch has let it fall. The eyes of Virginia and the Nation are upon you.

"The question has been asked by certain Virginia officials as to how the sovereignty of the State can be interposed, in that we cannot meet the physical force of the Federal Government with like physical force. We must rely upon the dauntless spirits of Virginia leadership to passively resist every judicial abuse of the Federal Government."

Speaking of the school issue, he said:

"But the school issue is only a springboard being used by those who would destroy States rights. While important, it, in itself, is insignificant to the events which may come tomorrow or next week.

"The acceptance and submission of Virginia to this principle, that the nine Justices of the Supreme Court of the United States may thus destroy the Constitution, designed by our forefathers as the bulwark of liberty for all generations of America, is the acceptance of tyranny and a betrayal of the historic destiny and tradition of Virginia as the creator and preserver of American liberty."

In this dramatic performance the legislators were in the saddle, but next November the voters will hold the position of power.

It will be the wish of all lovers of freedom that, by then, through diligent attention to their task, they will have moved into a position to effectively use it.

[From the Pioche (Nev.) Record, July 2, 1959]

OUR CONSTITUTIONAL RIGHTS: CAN THE PEOPLE DEFEND THEM?

A far-reaching issue is being molded in the State of Virginia for the approaching election. This question is whether the people of the United States will govern themselves or whether the scepter of government can be passed out of their hands. Virginia stands once again, in its historic position. It will guard the rights of the people of all the Nation or it will fail. The decrees of fate have set the issue to find its solution in Virginia.

Such an issue is of vital concern to all the people. But there is a prevailing silence, and even in Virginia the critical issue of "a rule of the people" is buried in emotional discussions.

There are two political action groups which have been developed in Virginia. One of these, headed by its political leaders, represents what is charged by their critics to be a masterpiece in betrayal and duplicity. It is charged that while proclaiming with words and promises that they will uphold the rights of the people against usurpation of assumed Federal authority, and while heaping inordinate abuse upon the members of the Court (who may be in entire good faith even if acting under a mistaken guidance), they proceed to adopt as the law, and apply to their State, the very illegal rulings they so strongly condemn.

In their criticism of the Court they make use of the same words that could be used to proclaim the Court's acts of usurpation to be illegal. And they neglect the legal means that has been provided, through the constitutionally reserved powers, which could be used to accomplish the fulfillment of their political promises, or at the very least such an effort could be debated.

Those who have been elected on the strength of their repeated assurances, that they would never yield to the unlawful usurpation in question, have hastened to yield, at the last special session of the legislature. This they did without time being given to debate the issues. Their only grounds given for this reversal, is their fear of Federal power—thus proclaiming to the world another declaration in error, that America is ruled by force and not by law.

THE POINT OF DIFFERENCE

The second group agrees that the Supreme Court ruling is unconstitutional, on the ground that it stands for the usurpation of a power which is denied to it. And therefore it is an ultra vires act. This second group contends that the ruling being illegal, it should be treated to that effect as a matter of law. It is usurpation and should be treated as such.

They would give effect to the language of Alexander Hamilton when he said: "Violation of constitutionally defined authority will be merely acts of usurpation, and will be deserved to be treated as such."

They would adopt the Supreme Court ruling handed down by Chief Justice John Marshall: "A law repugnant to the Constitution is void, and the courts as well as other departments are bound by that instrument."

This second Virginia group might well select a name better fitted to their belief in the law and to their determination to suppress lawlessness. However they have been brand-

ed with the unfortunate label of "Massive resistance."

This implication of resistance is a misfit. There is no remedy by the route of resistance to what is legally unauthorized. It calls for being put in cold storage. It is legally dead and needs to be buried in due form.

Powers not granted are reserved to the States. The States must use their reserved powers when it becomes necessary to protect their laws from acts of tyranny or usurpation of authority, especially where the State is the source of the authority being illegally assumed.

The invalid action of employees of any department or division of the Federal Government calls for its formal invalidation. Its lack of legal effect must be determined by proper authority. It cannot be determined by third party onlookers.

In the language of Chief Justice Marshall, any action of the departments of the Federal Government beyond the authority allotted to it is void. And this, he says, applies to the courts as well as to other offices created by the Constitution. This is the law. But it needs to be applied to the given situation.

THE QUESTION ANALYZED

If it is a fact that the decision in the Brown case is unconstitutional, as beyond the power granted to the Court under the Constitution, or if it is ultra vires to use the language of the report of the Virginia Commission on Constitutional Government, then it is void. The fact in this statement, is agreed to by all parties as applied in the Virginia situation. And what is the law, is a matter that has been decided by the Supreme Court.

If this is so found by a signatory State, one which has granted to the Supreme Court its powers, then the situation is not one which calls for resistance—it calls for an undoing of something that has been wrongfully done. It calls for such action as to make legally definite and beyond personal opinion, or debate, the fact that the unlawful act will not be recognized as a lawful act. Then as a matter of law the act becomes void and of no effect and there is no authority given anywhere under the Constitution that can contradict it. It stands as an exercise of an authority that has been reserved because it has not been otherwise granted.

The President is required to take an oath before he can qualify for the duties of his office that he will preserve, protect, and defend the Constitution of the United States.

Not so with members of the Supreme Court. It is required that they shall be bound by an oath to support this Constitution.

They, and all employees whose office is constituted by the agreement, are that firmly bound or tied in, as only an oath can bind them to the Constitution. None of their acts which are not a part of their constitutionally conferred authority can be an act of government and necessarily are void, as far as it concerns the Government.

A FIXED LEGAL POSITION

Any decision based on the authority quoted in the Brown case ruling in its footnote 11, to the effect that the Constitution is outmoded and not adapted to modern conditions, is out of the bounds fixed, and cannot be classed as an authorized act of the Court.

It would seem that the founders of our form of government have done their part to defend coming generations, and free them from the oppressions of that tyrannical rule it had cost them so much to throw off. Are we to admit we are unable to accomplish their clearly intended objective, with the means they have provided to that end?

But the founders of this constitutionally limited Government have done more than

require an oath to assure that Government agencies will stay put within the limits set. Among other protecting safeguards, they made the Federal agencies legally the employees of the States; that the signatory States constituted the positions that were to be filled by the employees of the agencies created and neither the agencies nor the employees are made parties to the agreement.

Their legal position is strictly one of a limited agency or employee. To demand the salaries due them is their only implied legal right, and all rights not given them being reserved to the States completes the work of the Founding Fathers to assure to the States the right of action against tyranny in the form of usurpation of powers by these employees or agencies.

THE SHOWDOWN

Since this Government was founded there has never been permitted to bring to a showdown such a clear-cut issue of whether the people of the Nation must consent to be ruled by an autocratic, unlawful, usurpation of tyrannical authority, against which the Constitution of the United States is designed and intended to furnish the most definite and complete protection.

Usurpation was the one great fear of the founders of our form of government. They considered its danger and did not end their labors without carefully laying down in principle the way to handle such unlawful actions.

For any politically strong group of men to be allowed to grasp autocratic powers through usurpation of authority is to submit to a complete overthrow of rule by the people. Such procedure is a side-door entrance to a Russian form of government, also established by usurpation, backed by lawless force, an autocratic dictatorship, which by the strangest paradox in history was firmly established as a world power by the wealth and manpower of the United States.

After more than 50 years of gradual encroachment upon individual rights by a slow, invisible movement, a kind of creeping paralysis, at last there is a showdown in the issue as now set up in the State of Virginia—the highly organized political force of the invisible hand against untutored, unorganized but firm will of the people to resist encroachment on their rights of self-government.

Before the people lies the role to elect representatives who will favor a law wherein the government of Virginia proclaims that the school-case ruling is beyond the range of power conferred upon the Court under the Constitution, and, therefore, is invalid and void and not the law in that State.

ON THE FIXING OF BOUNDARY LINES—A STATEMENT BY THE VIRGINIA COMMISSION ON CONSTITUTIONAL GOVERNMENT, SEPTEMBER 9, 1958

The human conflicts present in the controversy over the South's public schools are real, are complex, and cannot be minimized. Yet the public attention concentrated upon these social problems unfortunately has obscured a towering question of constitutional government, and this question transcends the immediate and personal issues of particular children in particular schools. It is in the hope of encouraging consideration of a basic concept of the American Republic that this commission, created by the General Assembly of Virginia in 1958, offers this statement.

This basic concept cannot be understood without some recognition of unalterable facts of history and long-established principles of law. Our Union is a union of States. That is what it was in the beginning and that is what it remains today. In this

Union, all power to govern flows from the people in their States. Some powers the people have delegated, under the Constitution, to Federal authority; all other powers they have reserved, under the Constitution, to themselves.

WE ARE NOT THE SAME

There are sound reasons for this. The States are not all the same; their economies, societies, interests, resources, are not all the same; customs and traditions vary enormously from State to State, and laws that might be wise and useful in one area may be demonstrably needless or even harmful in another. This diversity is part of the strength of the Union. It has been recognized as such from the very beginnings of our history, and the underlying theory of the Constitution is that the States are left free to govern themselves, subject only to the prohibitions they have expressly imposed upon themselves by the Constitution.

The States manifest their individual powers in many different ways. Each State, for example, fixes a minimum age at which its citizens may vote; and though some may believe it unwise to permit 18-year-olds to vote, nothing in the Constitution prohibits a State from thus extending its franchise. Similarly, many persons may doubt the soundness of a State law providing for rent control, but a State may adopt such a law if its people choose. Two States, Oklahoma and Mississippi, regard traffic in intoxicating liquors as immoral, and they have prohibited it; but the other 46 States are not compelled to accept this view. Half the States permit parimutuel gambling on horseraces; the other half do not. The point we seek to emphasize is that a practice which many people may regard as unwise, or unsound, or immoral, is not unlawful until it is made so by lawful process. That which some persons conceive to be socially or economically wrong may still be constitutionally right.

THE KEY QUESTION

Acceptance of this plain truth of our Government is vital to any proper understanding of the constitutional issue at stake in the South's public school crisis. The Southern States, or some of them, do not conceive the maintenance of racially separate schools to be morally wrong; on the contrary, they believe this policy to be in the best interests of all their people. That many persons strongly oppose this view is not to be doubted. But the question is not whether the Southern States, in exercising a power to maintain such schools, are acting morally or immorally; the question is whether they are acting constitutionally. Distasteful as the conclusion may be to some critics of the South, the conclusion cannot be escaped that the Southern States are fully within their constitutional rights in the position they have taken.

The conflict here, fundamentally, is one of the rights of the citizen and the powers of a State. Whatever the rights of the individual are, these rights cannot be infringed; correspondingly, whatever the powers of the State may be, these powers may be exercised at the State's discretion. In this controversy, as in countless others, the problem rests in determining the line at which rights end, and powers begin; it is a problem in the fixing of boundaries.

We must look to the 14th amendment to determine where this boundary lies. The 14th amendment, leaving aside all questions of the validity of its adoption, was conceived primarily as a prohibitory amendment: It was intended to prohibit to the States certain powers they had exercised in the past; specifically, the States were prohibited from denying to any citizen the equal protection of the laws. Beyond question, the effect of the amendment also

was to vest in the newly freed Negro people certain rights they had not enjoyed before—the rights, for example, to own property, to enter into contracts, and to sue and be sued.

WHAT ADDED?—WHAT SUBTRACTED?

The constitutional issue now before the country, in this context, is simply stated. So far as public schools are concerned, what individual rights were created? What State powers were reduced? If in 1868 certain rights were added to those possessed by the citizen, then in 1868 certain powers must have been subtracted from those held by the States. What did the amendment mean in terms of public schools?

Clearly, the Congress that framed the 14th amendment, and the States that ratified it, never intended for an instance that a guarantee of equal protection of the laws was to affect the operation of separate schools in any way. Long after the amendment was ratified, States both North and South continued to maintain racially separate institutions. It is unthinkable that they understood the amendment to prohibit them from the exercise of powers they were daily exercising.

The correctness of this understanding was confirmed repeatedly by the highest State and Federal courts in an unbroken line of decisions stretching over many years. It was confirmed, also, by the tacit acquiescence of the States themselves: When the doctrine of "separate but equal" was sanctioned by the Supreme Court of the United States in 1896, not a single State voiced a protest or asserted a misinterpretation of the amendment. And Congress, from the date of the amendment until the date of the school segregation cases, demonstrated its understanding of the amendment by actively maintaining separate schools in the District of Columbia. Thus the boundary line was fixed. By what authority may it now be changed?

THE LAW OF THE CASE

The position of the Southern States today is that the governmental power they exercised constitutionally for so many years—the power to maintain racially separate schools—cannot be prohibited to them by mandate of the Supreme Court. Many persons, it appears, believe that the Court has the right, as well as the power, to impose this prohibition upon the States as an addition to the "law of the land." In actual fact, the Court's mandate is no more than the "law of the case" in which it is handed down; the Court's power is a judicial power, not a legislative power, and it is worth emphasizing that there is now no law and no provision of the Constitution requiring racially integrated schools. Nevertheless, we acknowledge that some observers believe this to be the effect of the Court's opinion in the school cases. For our own part, we hold that in attempting to prohibit to the States the power to operate separate schools, the Court usurped the amendatory power that constitutionally is vested in three-fourths of the States alone.

In effect the Court sought not merely to interpret the Constitution, but substantively to amend the Constitution and this the Court has no authority to do.

The Virginia Commission on Constitutional Government respectfully urges the people of every State to reflect thoughtfully upon these matters. There are two questions involved in this struggle. The only question properly before the Supreme Court of the United States was whether a State's maintenance of separate schools is constitutional. The other question, whether such schools are morally and socially right or wrong, is a question of policy, not of jurisprudence.

It is our prayer that the people of the United States, whatever their views on segre-

gation, will reflect carefully upon the consequences of entrusting the formation of national social policies to a judicial body appointed for life. We cannot believe that our sister States, viewing the matter dispassionately, will fail to perceive the grave danger to all State powers that lies in the Court's drastic action here.

"IT IS NOT FOR THE COURT—"

These apprehensions are not peculiar to the South in 1958; Washington voiced them in his "Farewell Address." Lincoln many times emphasized the same points. More recently, Mr. Justice Black has asserted that it is not for the Supreme Court to roam at large in the broad expanses of policy and morals, and to trespass on the legislative domain of the States. Mr. Justice Douglas has warned that instability is created when a judiciary with life tenure seeks to write its social and economic creed into the Charter. Mr. Justice Frankfurter has declared that, "As a member of this Court, I am not justified in writing my private notions of policy into the Constitution, no matter how deeply I may cherish them or how mischievous I may deem their disregard." The late Chief Justice Vinson emphasized that because the Court must rest its decisions on the Constitution alone, we must set aside predilections on social policy and adhere to the settled rules which restrict the exercise of our power to judicial review. Holmes, Hughes, Sutherland, Harlan, Taney, among a host of great jurists, have insisted down through the years on strict adherence to the rule, in Hughes' phrase, that "it is not for the Court to amend the Constitution by judicial decree."

We should like also to direct attention to the words of Elihu Root, recently proclaimed as sound doctrine by the conference of chief justices of the several States:

"If the people of our country yield to impatience which would destroy the system that alone makes effective these great impersonal rules and preserves our constitutional government, rather than to endure the temporary inconvenience of pursuing regulated methods of changing the law, we shall not be reforming. We shall not be making progress, but shall be exhibiting . . . the lack of that self-control which enables great bodies of men to abide the slow process of orderly government rather than to break down the barriers of order when they are struck by the impulse of the moment."

Let us not abandon these wise admonitions in the passions of a turbulent hour.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

Mr. PORTER, for 60 minutes, today.

Mr. PUCINSKI, for 30 minutes, on September 7.

Mr. BRAY, for 5 minutes, on Monday, September 7.

Mr. BARR (at the request of Mr. McCormack), for 15 minutes, on Monday next.

EXTENSION OF REMARKS

By unanimous consent, permission to extend remarks in the CONGRESSIONAL RECORD, or to revise and extend remarks, was granted to:

Mr. HOLLAND and to include extraneous matter.

Mr. SILER in two instances and to include extraneous matter.

needed to strike at enemy bombers capable of air-launching ballistic missiles at the United States. A manned interceptor has important advantages over a pilotless vehicle such as the Bomarc. It can return, that is, be used in more than one engagement. It can be refueled in air, thus extending its range to meet the defense requirements. It can deal with evasive measures by the enemy with greater flexibility. It can be used in a number of roles, such as in limited warfare, whereas the Bomarc has only one function and is a one-shot weapon.

Third. Start a first priority anti-missile-missile program. The greatest threat to America's future is the ballistic missile. It does not make sense to spend several billion dollars on anti-bomber weapons when defenses against the new threat are being neglected. In a sense, the Bomarc-B represents a Maginot-line attitude toward air defense. We must adapt our defense to the challenge we are about to face. The Army's Nike-Zeus is the most likely weapon to meet this new role. A few well-placed dollars in the Zeus program will probably be a much wiser investment than the same amount of money for the Bomarc-B.

To carry through these recommendations may cost more than the billion or more dollars saved by the cancellation of the Bomarc-B. But the important point is this: We have to do these things anyway. We must develop a balanced offensive-defensive capacity for the missile age. We cannot afford to waste too much of our resources on outmoded defenses. We must have enough intercontinental and intermediate range ballistic missiles to constitute a credible threat to the Soviet Union if its leaders should consider an attack upon us. We should also have an effective defense in the event that the Soviets misjudge us, or act in haste or desperation.

The Bomarc-B deprives us of sufficient funds for our offensive and defensive needs. It should be canceled at once.

NATIONAL CONSTITUTIONAL CRISIS

Mr. ALFORD. Mr. Speaker, I ask unanimous consent to extend my remarks at this point in the RECORD and to include extraneous matter.

The SPEAKER. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

Mr. ALFORD. Mr. Speaker, in a speech in the House of Representatives on September 5, 1959, I included a series of illuminating editorials from the Pioche Record, of Pioche, Nev., and a statement by the Commission on Constitutional Government of the Commonwealth of Virginia under the title "The Constitutional Crisis: Its Threat to Liberty and the Remedy."

Since then, that speech has been widely circulated throughout the Nation. In

addition, in February 1960, it was published in book form under the same title by Robert Speller & Sons, 33 West 42d Street, New York 36, N.Y., in their *Makers of History Series*.

The latest contribution by the Pioche Record on the constitutional crisis is a thoughtful editorial in its February 18, 1960, issue. This gives an incisive legal analysis of the stand proposed for Virginia in measures introduced in the regular 1960 session of its general assembly, which were referred to committees that held hearings significant for the range of experience in the authorities presented.

The views expressed in this recent editorial can be helpful to other State governments. There are several, particularly those of New York and Pennsylvania that are facing constitutional questions and have to deal with flagrant usurpations of authority on the part of members of the Supreme Court.

It is more and more apparent to our national judiciary, our bar associations, and distinguished Members of the Senate that, in order for our constitutional form of government not to be discarded and replaced by dictatorship, our people as a nation must deal with a new form of assumed and self-appointed power.

What I am endeavoring to bring to the attention of the Congress is that the departure by the Court from the limits of the authority granted to it under the Constitution amounts to an overthrow of our form of government through the establishment of a dictatorship. If the limits of its authority are ignored by the agent we have a matter that must be dealt with according to law.

The Constitution of the United States has been applauded throughout the world and emulated by other nations. That was because it had successfully clipped the wings and limited the power of governmental agents, thus making them truly the servants of the people but not their masters. We now face the problem where the servants are assuming to become the masters. The discussion of this question along lines of a strict application of law should be of interest to the American people.

In view of the strange policy of the major press of our country, which seems to permit no discussion dealing with the constitutional aspects of these questions, it becomes of the highest importance for the Congress to take note of such proceedings as have been brought before the recent session of the Virginia General Assembly.

What the people of this Nation have now to deal with reflects an almost contemptuous departure from the power given to the Supreme Court. This is a disregard of the limits of the authority as clearly defined in the precise language of the Constitution. Under its requirements each Justice of the Court must be "bound by oath * * * to support this Constitution" in order that their actions as a court may be legal.

The responsibility of the government of New York to protect its people from moral degradation, the right of the gov-

ernment of Pennsylvania to investigate enemies within the State aiming to overthrow the State, the right of the government of Arizona to prevent alien enemies from being licensed to practice law within their respective jurisdictions, and the rights of the people generally to exercise powers to protect their morals, education, health, and general welfare, which rights have never been yielded to any governmental agency, must be recognized as beyond the power of employees of their government unless it can be shown when and where these rights have been acquired.

All authorities on constitutional law are in agreement that the Supreme Court is an agency of government brought into being by article III of the agreement among the States known as the Constitution of the United States; that the Supreme Court is an agency not of general but of limited power; that the power of the Court is limited to judicial power; and that what this gives to the Court is the power to apply existing law to the controversy between plaintiffs and defendants before the Court.

Similarly, all authorities on constitutional law are in agreement that all legislative authority granted by the Constitution is given to the Congress.

It is the well established law of the land and one that is sustained by a long line of decisions of the courts, including the Supreme Court, that intent must govern in the construction of contracts. Especially is this true as to the Constitution because the Constitution cannot be altered, changed, or corrected, except by amendment as strictly provided for in the Constitution itself.

The judicial power of the Supreme Court does not admit of an amendment to the Constitution nor of any change in the law. The latter is a matter of legislation and is delegated to the Congress only.

What is overlooked in constitutional discussions is the fact that, in the agreement among the signatory parties to the Federal compact, the Supreme Court is not made a party to it nor are the individual members of the Court made parties.

The signatory States agreed among themselves to limit the power of the agencies of the General Government which they created. Furthermore, the governments of the States are burdened with the obligation of carrying out the provisions of the contract. This covers whatever is done in relation to matters which take place within the jurisdiction of the State affected, all of which must be legal under the Constitution. It is for the States, the signatory parties, to see that the Federal Constitution is not made a mere scrap of paper and that the finest form of government of the people, and by the people, ever established is not by their own stupidity or neglect turned into a controlled oligarchy for centralized tyranny.

Mr. Speaker, we have in the recent actions in the General Assembly of the

Commonwealth of Virginia the first technically correct effort to apply the law as provided for in the Constitution to this threat and menace to our liberty as a free people.

The editorial above referred to follows:

[From the Ploche Record, Feb. 18, 1960]

THE NATION'S CONSTITUTIONAL CRISIS—A
LEGAL ANALYSIS OF VIRGINIA'S STAND

Recently organized citizens of Virginia have held a series of meetings to consider a grave constitutional crisis that is rocking the Nation and threatening to overthrow our form of government. In this way was developed for consideration a proposed clean-cut constitutional course of action that can be applied to the problem.

The matter in question had received widespread attention without a remedy being proposed. The Conference of State Chief Justices in 1958 charged that the Supreme Court "too often has tended to adopt the role of policymaker, without proper judicial restraint."

The distinguished Federal Judge Hand has said, "When the Court strikes down a law because it does not 'commend itself to the Court's notion of justice,' then the Court is usurping the function of the legislative branch and becomes, in effect, 'a third legislative chamber.'"

Similar statements have been made by bar associations and other organizations and prominent citizens.

The Governor of Virginia, in his address to the Legislature a year ago, speaks of his State being "battered by an unholy alliance of a conspiracy to destroy the Constitution."

He said, "I saw the Court ignore the Constitution, cast aside all precedent, Federal and State, and judicially legislate the ideology of a foreign Socialist into the Constitution, outside of record, with no opportunity for a hearing or cross-examination."

A CHANGE OF FRONT

Shortly after making this statement, at the specially called session of the Legislature held in April 1959, the Governor took possession of the State's legislative machinery. He directed its activities toward a complicated maze of indirections and evasion in a controlled legislative program. These proceedings were allowed to rest on the foundation that the Court had lawfully ruled in the school cases; that a valid decision of the Court had been handed down; that the decrees and orders of the Court were legally valid—the law of the land, leaving to the people of the State, to design a method for resistance to the law.

What was known by the name of "massive resistance" was neither "massive" nor "resistance." It amounted to opposition plus acquiescence in the legality of the Court's illegal action. It gave rise to a complicated maze of proceedings to evade or to obstruct the enforcement of the law, trying to solve the problem by force instead of by law. Paradoxically the Governor's plan gives the effect of law to the very illegal proceedings he had objected to.

These recent Virginia meetings have afforded an opportunity to give a more constructive approach to this question. They have had time to consider whether what has been assumed to be a valid court order is, or is not, founded on a lawful decision of the Supreme Court. All have agreed that the Court was not acting within the constitutional limits of its authority. But no State, a party to the contract, has yet spoken through its government, with adequate definiteness, on this subject. And no one else

but a party to this contract can speak with legal effect on this subject.

VOTERS' CONSTITUTIONAL POSITION

Our position is essentially different from that of the Governor. This is no effort to evade or contradict any valid decision of the Supreme Court. It asks for a discussion of the obvious plan of those wise and far-seeing men, the Founders of our Constitution, who have provided a way to proceed, when Federal agents usurp powers not given to them under that instrument.

This proposal is an abrupt departure from the proceedings so far conducted under the direction of Virginia's Governor who has "followed a zigzag course," attempting to evade or circumvent the enforcement of an invalid ruling. This ruling being ultra vires can have the effect of law only by acquiescence, or by positive approval.

Efforts to bring some order out of the confusion we have to deal with are reflected by the following statements:

1. We hold that anything we may do about this school problem must be lawful, otherwise it is a temporary makeshift.

2. All laws relating to the operation of our schools must be constitutional. Accordingly, they must rest on the vote of the people through their duly elected representatives or some other constitutional procedure. The law is well established that, with governments of limited powers, what is not founded on constitutional authority is not an authorized act. It becomes void when so declared by a signatory State party to the contract under which the Court derives its powers and in fact its existence.

3. If the Constitution had granted to the Court the authority to determine the limits of its own powers, it would thereby have established tyrannical dictatorship. This is what is now being attempted to be brought about through usurpation, while to avoid this was the controlling purpose of the Revolutionary War.

4. The Constitution having not granted that determinative power to anyone else, therefore, it must be included among those powers reserved to the signatory States. This power now can be used to establish whether the Court was exercising judicial powers as allowed, or legislative powers as prohibited.

5. An attempted usurpation of power was one of the matters contemplated and it was discussed by the framers of the Constitution, and protection from it was provided for by those far-seeing men and can be used by the States when such action becomes necessary, and that time has come.

Therefore, the immediate problem before this State is to dispel the confusion on this one question. What is the law?

This can be done by making definite the law, through action of the lawmaking powers of the State: first in determining the question whether the Court's orders were based on lawful constitutional action, or whether they were illegal acts of members of the Court usurping, or attempting to usurp, powers not granted to them, and then taking appropriate action under amendment 10 of the Constitution.

The organized proceedings, in the last session of the Legislature precluded any such action at that time. The present session of the Legislature will direct its attention to the legal aspects of this question. It will proceed to study the action of the Court from the standpoint of constitutional law. It will go into the question of the powers of the Court. It will give consideration to the fact that, as a matter of law, the Government of the United States is based on constitutional grants of authority.

THE CONSTITUTION IS A SIGNED CONTRACT

The signatory States have given to the three departments of Government, each made separate and independent of the other, strictly defined and limited powers, reserving everything else. The States are united to the extent they have granted these powers; they are not united to any other or further extent.

Each of these three departments has a prescribed role to perform and to each are given certain authorized powers within the boundaries of that role, and none of the three can give directions to the other. The signatory States have reserved to themselves the usual powers of parties to the agreement, to regulate and enforce compliance of each department with the terms of their employment.

This gets us to the question: When the limit of the authority granted to the Supreme Court is exceeded, where will the power come from to deal with the interference with a State's laws by the unlawful actions of these nine men. They cannot act as a court unless they act within the authority intended to be given to the Court. The requirement that they "shall be bound by an oath to support the Constitution," makes unlawful what they do when they take action beyond the authorized limits of the Court.

Article III of the Constitution plainly states what is the limit of the power of the Supreme Court. It is limited to "judicial power."

The members of the Court are held to the role of a judge seeking to reach a decision, by applying the law as determined and as established by the lawmaking agencies of Government and as already established, to the claims of the plaintiff and the defendant, and so reach the judicial determination of the issues presented.

If the rulings of the Supreme Court involve a conflict with the law as established, for example, if the law requiring the Constitution to be construed in accord with the intent of the parties, or if the Court has concluded that the Constitution is outmoded and not adapted to modern conditions and to make changes accordingly, we are given the basis for a solution to this problem. If they are acting without constitutional authority and in contempt of the oath that must bind them to the Constitution, their acts may not be classed as lawful acts of the Court.

Over a period of years the fundamental principle of law here involved has been sustained over and over again by decisions of the Supreme Court, starting with the ruling of Chief Justice Marshall in the famous case of *Marbury* against *Madison*. In that case we find that any acts of Federal agencies that are not authorized under the Constitution are lacking in constitutional authority and therefore null and void, and further, that such restrictions shall be applied to the courts as well as to the other Federal agencies.

THE SOURCE OF CONSTITUTIONAL AUTHORITY

Whether the act is within the area of authority granted to the Court is a matter to be determined by some higher source of authority than the Court itself. The question whether the Court has entered a lawful ruling or whether the members of that Court, in violation of the limits of their authority have issued orders pretended to be based on legal authority but which are not, cannot be a question for the Court itself. In determining this question what higher source of authority can be found than the source from which the powers of the Court have been derived; namely, the signatory

parties to the agreement which creates their employment, which provides for and directs their appointment and limits their authority—a contract in which they are not even permitted the privilege of being made a party.

Any attempt to usurp power which has not been given to the Court, any effort to regulate the legal affairs of States over which they have no authority, is an act to overthrow established government.

Their announcement of what is the better course of procedure, based on authorities that are in conflict with, rather than in accord with, the Constitution is in direct violation of the limits they must be bound by on oath to observe.

There are questions that could be asked to clarify the thoughts of those who would put the constitutional issue in the background:

(a) Do you agree that the ruling in the David case was beyond the authority granted the Court under the Constitution as was claimed by the Governor of Virginia, and as was reported by the Virginia Commission on Constitutional Government in 1958, or do you hold it was a lawful act within the constitutional authority of the Court?

(b) If constitutional authority in these proceedings is lacking, are the school case rulings lawfully authorized acts of a court or a usurpation, or attempted usurpation, of power on the part of the members of the Court?

(c) If the proceedings in the school cases are illegal, not being constitutionally based, how can that ruling become law in Virginia, unless it is given the approval by that State, either by direct action, or by acquiescence?

(d) Should you agree that the action of the Court in the Brown case is not founded on constitutional authority, can you design any constitutional grounds for objecting to the State's using the power reserved to it under amendment X of the Constitution, to declare that since the ruling is unauthorized it cannot be regarded as an authorized ruling of the Court and therefore is not a law within the jurisdiction of this State?

(e) Is the State of Virginia one of the signatory parties to that agreement and as such, possessed of the right to enforce its provisions?

The same legal aspect as worked out by the Founders of our form of government are embodied in the common law principles of contracts and agencies, which were established at that time, and are still applicable to this carefully drawn and formally executed contract.

MANY OTHER STATES AFFECTED

Other States are interested and some of them vitally concerned with this same question. The State of New York, under its police powers which are reserved under the Constitution, are given full authority to protect its people from immoral influence, which tend to degrade and increase crime psychology. These protecting laws, enacted by the government of New York, have been set aside by the Supreme Court in contradiction to its limited power.

The State of Pennsylvania, which has reserved to itself the inalienable right to deal with its enemies within the State, has enacted necessary sedition laws. It has been stopped from pursuing subversive activities and its laws have been held invalid by proceedings and orders of Justices of the Supreme Court. No authority has been given to it to override the police powers of the State of Pennsylvania.

In the State of New York, operating under the laws of New York, a college professor who refused to disclose communistic affiliations,

was discharged for breach of his contract of employment where the New York law required employees to answer questions. He was ordered by the Supreme Court to be reinstated and something like \$40,000 back-pay was ordered to be paid to him. No constitutional authority to override the laws of New York and leave that State helpless to defend itself from its enemies within the State has ever been given to the Court by the State of New York.

In the Jenkes case the secret FBI files were ordered by the Supreme Court to be made available to a criminal who was charged with offenses against the safety of the United States as a part of a secret organization of its foreign enemies. In a dissenting opinion, Justice Clark pointed out that the Court is making a new ruling for procedure without the approval of Congress.

Three hundred employees of the Executive branch of the Federal Government were dismissed by the State Department for activities that rated them as bad security risks. The Supreme Court directed that in spite of the risks, these men be reinstated with back pay. The Constitution gives no authority to the Court to make contracts of employment in any case.

In the Peck case the Court undertakes to dictate to Congress what areas of wrongdoing may be investigated and sets off an area of freedom of association for Communists. The majority of the Court thus renders it practically impossible for Congress to investigate into and expose the secret activities of the Nation's organized enemies.

In Arizona a Communist is considered an enemy to the State if he is seeking to overthrow its government by secret intrigues. An applicant for a license to practice law in that State was denied on the ground that the applicant was such a Communist. The Supreme Court required the State to admit him to practice law in that State.

Various cases of interference with other States in handling their internal affairs, particularly with reference to the water rights of Western States, as to matters entirely within their own boundaries, has given rise to an ever-growing necessity for action to be taken to assert the constitutional powers of the people, against usurped authority by members of the Court.

In this situation the position of the State of Virginia stands out. The entire structure of its laws in the administration of its educational system is completely upset and rendered impossible of enforcement, either in accordance with its own laws, or in accordance with the ruling of the Court, even assuming the Court's order to be a valid law.

WE FACE A MOVEMENT TO UPSET OUR CONSTITUTIONAL PLAN OF GOVERNMENT

The time has arrived for action by the route of clarifying the legal position of the State. Illegal acts of a Federal agency where they lack constitutional authority is a matter for the employment of the reserved powers under the Constitution.

What the people of Virginia have objected to is that this constitutional issue has been suppressed. Why has it not been brought to the attention of their Legislature or to the press? Are the Court proceedings constitutionally authorized, or are they constitutionally invalid? This is the question that has been evaded.

The fact that the members of the Supreme Court must be bound by oath to refrain from holding in contempt the limit of authority which is imposed upon them, is a condition to their employment. It must be faced.

The Governor and his handpicked legislative commission have used parliamentary

procedure to control and direct the Legislature. Through steamroller methods they have worked to suppress, rather than debate, the constitutional aspects of this question, the neglect of which now looms up as a threat to constitutionally guaranteed freedom of the citizen, not only of Virginia, but of the rest of the United States.

The present situation gives rise to the conclusion that we are at a crossroads in our constitutional form of government. Either we will have a strict observance of limited authority by governmental agencies, set up under our constitutional form of government, in accord with the intent of the signatory parties thereto, or else we will have tyrannical assertion of autocratic powers on the part of our employed agencies of government.

It is proposed that the members of the present Virginia General Assembly be allowed to vote, either for or vote against, a proper resolution to give effect to these constitutional limitations, that are so definitely and so formally affixed as a part of the employment of all Federal employees. To prevent such a vote will be the plan of those who are contriving to destroy the Constitution.

The time has arrived for a showdown on this question, and the Virginia Assembly stands at the Pass of Thermoplaee to defend or surrender the personal freedom and liberty, handed to us at such great cost—at what great cost.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to Mr. DOYLE, for March 15, on account of official business as subpoenaed witness in district court.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

Mr. HOFFMAN of Michigan, for 10 minutes, on Tuesday, Wednesday, and Thursday next.

Mr. MICHEL (at the request of Mr. HALLECK), on March 16, for 60 minutes.

EXTENSION OF REMARKS

By unanimous consent, permission to extend remarks in the CONGRESSIONAL RECORD, or to revise and extend remarks, was granted to:

Mr. JACKSON and to include extraneous matter.

Mr. MASON and to include extraneous matter.

Mr. DULSKI and to include an editorial.

Mr. ALGER.

Mr. FEIGHAN.

Mr. STRATTON and to include extraneous matter.

(At the request of Mr. HALLECK, the following Members were granted permission to revise and extend their remarks and include extraneous matter in the RECORD:)

Mr. PELL.

Mr. McDONOUGH.

(At the request of Mr. ALBERT, the following were granted permission to

TAX DEDUCTIONS SHOULD BE PERMITTED ON INDIAN CHILDREN LIVING IN NON-INDIAN HOMES

Mr. COLLIER. Mr. Speaker, I ask unanimous consent that the gentleman from Utah [Mr. DIXON] may extend his remarks at this point in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. DIXON. Mr. Speaker, today I have introduced a bill which is being co-sponsored by Senator WALLACE F. BENNETT in the Senate to permit non-Indian families who take Indian children into their homes for a school year to receive a tax deduction.

Approximately 360 families in the intermountain area are paying the living costs of Indian children and taking them into their homes during the present school year and the number is growing every year. In addition to this there are many families which are similarly financing the expenses of Indian college students.

It is an injustice that the fine citizens who take on this responsibility cannot count these children as tax deductions because of the present Internal Revenue Service ruling that nonrelatives must live in a home an entire year to be counted as tax deductions. Under this program the Indian children are deliberately not kept in the non-Indian families' homes for the entire year because they would then lose their connection with their own families. The Indian children are regularly sent to their own homes for at least two months during the summer.

It is highly desirable to encourage non-Indian families to take in Indian children and help give them the training for future leadership among their own people. So far there has been no significant problem of acceptance of the Indian children in the white communities and that they have adjusted well to the public schools. Some of the Indian children have been outstanding students and athletes.

This program has been in operation for 5 years and is sponsored primarily by the Latter-day Saints Church. Its success thus far should commend the program to the attention of other groups who might consider instituting similar programs.

I would like to add one more reason why it is important that Congress correct this inequity in the tax laws. As is often the case with worthy causes many of the people who take these Indians into their homes and clothe, feed and care for all of their needs for 9 or 10 months a year are above average in generosity but below average in income. And yet I have received letters from them indicating that they are so thrilled with the results of the program that if they were permitted a tax deduction, they would be able to take even more Indian children into their homes. Thus allowing such a tax deduction may be a factor in causing this program to become widespread. This would be most desirable because it would result in the education and rehabilitation of the com-

ing generation among the Indians rather than having them treated as wards of the States as we have tended to do in the past.

THE SOCIAL SECURITY LAW

Mr. COLLIER. Mr. Speaker, I ask unanimous consent that the gentleman from Massachusetts [Mrs. ROGERS] may extend her remarks at this point in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mrs. ROGERS of Massachusetts. Mr. Speaker, I include as a part of my remarks the following resolutions from the Commonwealth of Massachusetts:

RESOLUTIONS MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO ENACT LEGISLATION AMENDING THE SOCIAL SECURITY LAW

Whereas it is advisable to raise the maximum which an individual can earn while obtaining full social security benefits from the present \$1,200 a year to \$2,500 a year, and to permit wives to earn more than the present maximum of \$1,200 a year: Therefore be it

Resolved, That the General Court of Massachusetts respectfully urges the Congress of the United States to give early and favorable consideration to the enactment of legislation to amend the social security laws to raise the maximums which may be earned under the social security laws; and be it further

Resolved, That copies of these resolutions be sent forthwith by the secretary of the Commonwealth to the Senators and Representatives in Congress from this Commonwealth.

House of representatives, adopted, February 29, 1960.

LAWRENCE R. GROVE,
Clerk.

Senate, adopted, in concurrence, March 2, 1960.

IRVING N. HAYDEN,
Clerk.

A true copy. Attest:
JOSEPH D. WARD,
Secretary of the Commonwealth.

RESOLUTIONS MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO ENACT A FEDERAL AREA REDEVELOPMENT ACT

Whereas passage of a Federal Area Redevelopment Act would provide Federal aid for the revitalization of older mill and factory areas, and thereby enable the Commonwealth to compete more effectively with other States for new industry and provide funds for the retraining of workers in areas of chronic unemployment: Therefore be it

Resolved, That the General Court of Massachusetts respectfully urges the Congress of the United States to give early and favorable consideration to the passage of a Federal Area Redevelopment Act; and be it further

Resolved, That copies of these resolutions be sent forthwith by the secretary of the Commonwealth to the Senators and Representatives in Congress from this Commonwealth.

House of representatives, adopted, February 29, 1960.

LAWRENCE R. GROVE,
Clerk.

Senate, adopted, in concurrence, March 2, 1960.

IRVING N. HAYDEN,
Clerk.

A true copy. Attest:
JOSEPH D. WARD,
Secretary of the Commonwealth.

NATIONAL CONSTITUTIONAL CRISIS—SEQUEL

Mr. ALFORD. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD and to include extraneous matter.

The SPEAKER. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

Mr. ALFORD. Mr. Speaker, in a statement to the House in the RECORD of March 14, 1960, I included an editorial in the February 18, 1960, issue of the Pioche Record of Pioche, Nev.

This editorial is an incisive legal analysis of the stand proposed for Virginia in measures introduced in the 1960 session of its General Assembly, among them House Joint Resolution 44, which was referred to committees that held hearings which were notable in the history of this great Commonwealth for the range of experience of the authorities presented.

House Joint Resolution 44, which passed the Virginia House of Delegates, has been referred to a committee in the Senate.

In order that the text of this resolution may be available for reference in connection with the legal analysis of the stand proposed for Virginia, it is quoted as follows:

HOUSE JOINT RESOLUTION 44

Joint resolution concerning the powers of the Commonwealth of Virginia and the United States, respectively

Whereas it is necessary to restate the line of demarcation between the powers conferred upon the United States and those reserved to Virginia and her sister States: Now, therefore, be it

Resolved by the House of Delegates (the Senate concurring)—

1. That there is evidence of foreign intervention in our affairs of government that should be a matter of grave concern to our people.

2. That the persistent effort to upset the happily progressing improvement, in relations that have existed among the different races of the people in our Nation, can only be construed as an effort to weaken the Nation as well as to upset the rule of the people, through the means of artificially contrived controversies.

3. That the trend of the constituted agencies of Federal authority to exercise powers in excess of what is granted to them under the Constitution of the United States has now progressed to a point where the misrule of our people is comparable to the state of our affairs which afforded the grounds for our Revolutionary War.

4. That a study of the statement of the Virginia Commission on Constitutional Government dated September 9, 1958, which classifies the action of the Supreme Court in the school cases as lacking in constitutional authority, raises a question which may be thus stated: Referring to the tyrannical usurpation of power by the British Parliament in its enactment of the Stamp Act, which was questioned and repudiated by the General Assembly of Virginia under the resolutions introduced by the illustrious Patrick Henry in 1765, which Stamp Act was later repealed by the Parliament; was this assumption of power by the British Parliament anything less, by way of usurpation of authority, than was the action of the members of the Supreme Court, who can only act as a court when their actions are held within the bounds of the authority granted to them under the Constitution?

5. That the authority of the Parliament to enact the Stamp Act was limited by the Virginia Charter of James I and was so declared by the 1765 resolutions of the Virginia Assembly, so likewise the authority of the Supreme Court is limited in its authority as fixed by this State and recorded in article III of the Constitution and should be so declared by the General Assembly.

6. That article III, by limiting the activities of the Court to "judicial power," restricts it to the application of established law, as already fixed by the lawmaking agencies of government, to the parties and matters in litigation before the Court, and, that this also requires that in the interpretation of the Constitution the Court shall be guided by the rule of law that the intent of the ratifying parties shall govern in determining its meaning.

7. That the Stamp Act was based on questioned authority, in conflict with the Charter of the Virginia Colony and, for that reason was repudiated by the Virginia Assembly, in like manner the interference with the laws of this State by the unauthorized and therefore unlawful acts of members of the Supreme Court in the matters relating to public education, we likewise repudiate and declare not the law, on the same grounds, namely, the lack of constitutional authority.

8. That no such authority can be found to have been conferred upon the Court within the grant of power accorded to it by the people of this State as recorded in the compact or agreement known as the Constitution of the United States or in any amendment thereto.

9. That no power is granted under that Constitution to interfere with the administration of the laws relating to the public schools of this Commonwealth, without the Constitution of this State or the laws made pursuant thereto being duly determined and decreed to be in conflict with the Constitution of the United States, after a hearing duly held by the Supreme Court in an action to which the State of Virginia is a party, with full opportunity for the State to be heard as required by the Constitution.

10. That the constitution of the Commonwealth of Virginia and the Constitution of the United States are still the law in this State and will remain the law until changed or amended in the manner provided by law.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

Mr. McCORMACK for 30 minutes, today, on the 112th anniversary of the independence of Hungary.

Mr. VAN ZANDT (at the request of Mr. COLLIER), for 15 minutes, on March 16.

Mr. CONTE (at the request of Mr. COLLIER), for 5 minutes today.

EXTENSION OF REMARKS

By unanimous consent, permission to extend remarks in the CONGRESSIONAL RECORD, or to revise and extend remarks, was granted to:

Mr. WALTER.

Mr. SMITH of Kansas.

Mr. HOLLAND and to include extraneous matter.

Mrs. ROGERS of Massachusetts.

Mr. GALLAGHER.

Mr. WEAVER.

(The following Members (at the request of Mr. BURKE of Kentucky) and to include extraneous matter:)

Mr. McDOWELL in two instances.

Mr. TOLL.

Mr. HECHLER.

Mr. PATMAN.

ADJOURNMENT

Mr. BURKE of Kentucky. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 24 minutes p.m.) the House adjourned until tomorrow, Wednesday, March 16, 1960, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1947. A letter from the Secretary of the Treasury, transmitting the Annual Report of the Secretary of the Treasury on the State of the Finances of the Federal Government for the fiscal year ended June 30, 1959 (H. Doc. No. 243); to the Committee on Ways and Means and ordered to be printed with illustrations.

1948. A letter from the Under Secretary of the Interior, relative to an application for a loan to the Browns Valley Irrigation District in Yuba County, Calif., pursuant to the Small Reclamation Projects Act of 1956 (Aug. 6, 1956, 70 Stat. 1044, as amended June 5, 1957, 71 Stat. 48); to the Committee on Interior and Insular Affairs.

1949. A letter from the Administrator, Small Business Administration, transmitting a draft of proposed legislation entitled "a bill to amend the Small Business Act, and for other purposes"; to the Committee on Banking and Currency.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. THOMPSON of New Jersey: Joint Committee on the Disposition of Executive Papers. House Report No. 1391. Report on the disposition of certain papers of sundry executive departments. Ordered to be printed.

Mr. ROGERS of Texas: Committee on Interior and Insular Affairs. S. 1185. An act to provide for the preservation of historical and archeological data (including relics and specimens) which might otherwise be lost as the result of the construction of a dam; without amendment (Rept. No. 1392). Referred to the Committee of the Whole House on the State of the Union.

Mrs. PFOST: Committee on Interior and Insular Affairs. H.R. 6851. A bill authorizing the establishment of a national historic site at Bent's Old Fort, near La Junta, Colo.; with amendment (Rept. No. 1393). Referred to the Committee of the Whole House on the State of the Union.

Mr. SPENCE: Committee on Banking and Currency. H.R. 10213. A bill to amend the National Housing Act to halt the serious slump in residential construction, to increase both on-site and off-site job opportunities, to help achieve an expanding full employ-

ment economy, and to broaden homeownership opportunities for the American people; with amendment (Rept. No. 1394). Referred to the Committee of the Whole House on the State of the Union.

Mr. BONNER: Committee on Merchant Marine and Fisheries. S. 1712. An act to extend the application of the Motorboat Act of 1940 to certain possessions of the United States; without amendment (Rept. No. 1395). Referred to the Committee of the Whole House on the State of the Union.

Mr. BONNER: Committee on Merchant Marine and Fisheries. S. 2185. An act to provide appropriate public recognition of the gallant action of the steamship *Meredith Victory* in the December 1950 evacuation of Hungnam, Korea; without amendment (Rept. No. 1396). Referred to the Committee of the Whole House on the State of the Union.

Mr. BONNER: Committee on Merchant Marine and Fisheries. S. 2482. An act to remove geographical limitations on activities of the Coast and Geodetic Survey, and for other purposes; with amendment (Rept. No. 1397). Referred to the Committee of the Whole House on the State of the Union.

Mr. BONNER: Committee on Merchant Marine and Fisheries. H.R. 5055. A bill to remove a restriction on the use of certain real property heretofore conveyed to the city of St. Augustine, Fla., by the United States; with amendment (Rept. No. 1398). Referred to the Committee of the Whole House on the State of the Union.

Mr. BONNER: Committee on Merchant Marine and Fisheries. H.R. 9084. A bill to repeal certain retirement promotion authority of the Coast and Geodetic Survey; without amendment (Rept. No. 1399). Referred to the Committee of the Whole House on the State of the Union.

Mr. BONNER: Committee on Merchant Marine and Fisheries. H.R. 9599. A bill to provide transportation on Canadian vessels between ports in southeastern Alaska, and between Hyder, Alaska, and other points in southeastern Alaska, and between Hyder, Alaska, and other points in the United States outside Alaska, either directly or via a foreign port, or for any part of the transportation; without amendment (Rept. No. 1400). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ANFUSO:

H.R. 11169. A bill to provide that tips and gratuities received from customers of an individual's employer may be included as part of such individual's wages for old-age, survivors, and disability insurance purposes; to the Committee on Ways and Means.

By Mr. BARRY:

H.R. 11170. A bill to establish a Federal Recreation Service in the Department of Health, Education, and Welfare, and for other purposes; to the Committee on Education and Labor.

By Mr. COLLIER:

H.R. 11171. A bill to amend section 37 of the Internal Revenue Code of 1954 to equalize for all taxpayers the amount which may be taken into account in computing the retirement income credit thereunder; to the Committee on Ways and Means.

By Mr. DIXON:

H.R. 11172. A bill to amend the Internal Revenue Code of 1954 to provide that the taxpayer's personal exemption for an individual not related to him shall be allowed if such individual resides in his home for

Justice, the National Catholic Rural Life Conference, the Board of National Missions of the Evangelical and Reformed Church, the Bishops Committee on Migratory Labor, the Young Christian Workers, the Bishops Committee on the Spanish Speaking, the National Consumers League, the AFL-CIO, the American G.I. Forum, the Joint United States-Mexico Trade Union Committee, Amalgamated Meatcutters and Butcher Workers, AFL-CIO, the National Advisory Committee on Farm Labor, the National Sharecroppers Fund, the National Education Association, the National Council on Agricultural Life and Labor, and the National Child Labor Committee.

These organizations as well as the administration believe that the time has come when we should make it public policy to accomplish in agriculture what we have already accomplished in other sectors of our economy; namely, the restoration of respect and dignity, based upon good wages, good working conditions and steady employment, to the men and women who labor for hire on American farms.

The passage of H.R. 6032, would constitute a definite step toward the accomplishment of this goal.

OUR FIRST GRAVE CONSTITUTIONAL CRISIS—1861

Mr. ALFORD. Mr. Speaker, I ask unanimous consent to extend my remarks at this point in the Record and include extraneous matter.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

Mr. ALFORD. Mr. Speaker, 100 years ago, a general convention of the Commonwealth of Virginia, elected pursuant to an act of its General Assembly passed January 14, 1861, was in session in the old hall of the House of Delegates of the capitol in Richmond.

Convened for its first session on February 13, 1861, with James H. Cox of Chesterfield County as temporary president, the convention included among its members some of the most distinguished men of the Old Dominion.

At that time, seven States had already adopted acts of secession from the United States and formed the Confederate States: South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana, and Texas. But Virginia, fully alert to the crucial significance of whatever action it might take, was delaying decision with the hope of peace and conciliation. The attempt of the United States to reinforce Fort Sumter was yet to be made.

It was under these circumstances that the convention, on the first day, elected for its permanent president one of Virginia's ablest lawyers and statesmen, John Janney—1798–1872—of Leesburg.

A recognized leader who had missed becoming President of the United States by only one vote, Janney was a constitutional unionist. As such he was associated with other Virginians heroically striving to prevent secession and thus to avoid the great tragedy that was clearly foreseen.

Escorted to his seat by a committee composed of George W. Summers of Kanawha and Thomas S. Flournoy of Halifax, President Janney opened his administration of the convention with a moving address aimed at saving the Union. Its appeal bore fruit on April 4, when the convention voted 89 to 45 not to secede.

Unfortunately, 8 days later, on April 12, 1861, and under circumstances too complicated for recital here, the first shot in the War Between the States was fired at Fort Sumter, aggravating an already critical situation.

Unable to secure a status of neutrality for Virginia, the convention, faced with the cruel choice of supplying troops to invade other States in an unauthorized war or of resisting an unconstitutional invasion of its own territory, reversed its previous stand. On April 17, 1861, it adopted by a vote of 88 to 55 an ordinance for repeal of Virginia's "ratification of the Constitution of the United States" and for resumption of "all the rights and powers granted under said Constitution," President Janney voting in the negative.

It was following this decision that Col. Robert E. Lee, on April 20, after having been offered supreme command of the forces that were to be used for the coercion of other States, resigned his commission in the U.S. Army.

Promptly appointed major general and commander in chief of the armed forces of Virginia, he was acclaimed on April 23, 1861, by the convention in a memorable ceremony attended by such southern notables as Alexander H. Stephens, Vice President of the Confederate States, and Matthew Fontaine Maury.

For a second time, Mr. Janney, a lifelong friend of General Lee, moved the convention in the same old House of Delegates Hall by his eloquent tribute to the commander in chief. General Lee's response, brief and modest, is today inscribed on his monument on the spot in the hall where he stood at the time.

After guiding the convention through its most difficult period incident to the collapse of one Federal Government and the setting up of a new one, Mr. Janney, worn out by his efforts, on November 6, 1861, resigned from the presidency of the convention for reasons of health. He was succeeded by Robert L. Montague of Matthews and Middlesex.

After Mr. Janney's resignation, the convention on December 6, 1861, passed a resolution thanking him for the "impartial, efficient, and dignified performance of his duties, whilst presiding over their deliberations." In response, Mr. Janney made a third stirring address.

Mr. Speaker, these three addresses by John Janney, as well as anything I have ever read, epitomize the supreme catastrophe of our history. As such, they should be read by every thoughtful American today, especially the young on whose shoulders will fall the task of maintaining constitutional liberty.

I can think of no more effective manner in which the start of the War Between the States and the great tragedy that it generated can be commemorated than by quoting the three indicated ad-

resses of Mr. Janney and General Lee's response:

PRESIDENT JANNEY'S OPENING ADDRESS,¹ FEBRUARY 13, 1861

The President: Gentlemen of the convention, I tender you my sincere and cordial thanks, for the honor you have conferred upon me, by calling me to preside over the deliberations of the most important convention that has been assembled in this State since the year 1776.

I am without experience in the performance of the duties to which you have assigned me, with but little knowledge of parliamentary law and the rules which are to govern our proceedings, and I have nothing to promise you but fidelity and impartiality. Errors I know I shall commit, but these will be excused by your kindness, and promptly corrected by your wisdom.

Gentlemen, it is now almost 73 years since a convention of the people of Virginia was assembled in this hall to ratify the Constitution of the United States, one of the chief objects of which was to consolidate, not the Government, but the Union of the States. Causes which have passed, and are daily passing, into history, which will set its seal upon them, but which I do not mean to review, have brought the Constitution and the Union into imminent peril, and Virginia has come to the rescue. It is what the whole country expected of her. Her pride as well as her patriotism—her interest as well as her honor, called upon her with an emphasis which she could not disregard, to save the monuments of her own glory. Her honored son who sleeps at Mt. Vernon, the political mecca of all future ages, presided over the body which framed the Constitution; and another of her honored sons, whose brow was adorned with a civic wreath which will never fade, and who now reposes in Orange County, was its principal architect, and one of its ablest expounders—and, in the administration of the Government, five of her citizens have been elected to the chief magistracy of the Republic. It cannot be that a government thus founded and administered can fall, without the hazard of bringing reproach, either upon the wisdom of our fathers, or upon the intelligence, patriotism, and virtue of their descendants.

It is not my purpose to indicate the course which this body will probably pursue, or the measures it may be proper to adopt. The opinions of today may all be changed tomorrow. Events are thronging upon us, and we must deal with them as they present themselves.

Gentlemen, there is a flag which for nearly a century has been borne in triumph through the battle and the breeze, and which now floats over this capitol, on which there is a star representing this ancient Commonwealth, and my earnest prayer, in which I know every member of this body will cordially unite, is that it may remain there forever, provided always that its luster is untarnished. We demand for our citizens perfect equality of rights with those of the empire States of New York, Pennsylvania, and Ohio, but we ask for nothing that we will not cheerfully concede to those of Delaware and Rhode Island.

The amount of responsibility which rests upon this body cannot be exaggerated. When my constituents asked me if I would consent to serve them here if elected, I answered in the affirmative, but I did so with fear and trembling. The people of Virginia have, it is true, reserved to themselves, in a certain contingency, the right to review our action, but still the measures

¹ Journal of the Acts and Proceedings of a General Convention of the State of Virginia, assembled at Richmond on Feb. 13, 1861. Richmond: Wyatt M. Elliot, printer, 1861, pp. 8–10.

which we adopt may be fraught with good or evil to the whole country.

Is it too much to hope that we, and others who are engaged in the work of peace and conciliation, may so solve the problems which now perplex us, as to win back our sisters of the South, who, for what they deem sufficient cause, have wandered from their old orbits? May we not expect that our old sister, Massachusetts, will retrace her steps? Will she not follow the noble example of Rhode Island, the little State with a heart large enough for a whole continent? Will she not, when she remembers who it was who first drew his sword from the scabbard on her own soil at Cambridge, and never finally returned it, until her liberty and independence were achieved, and whence he came, repeal her obnoxious laws, which many of her own wisest and best citizens regard as a stain upon her legislative records?

Gentlemen, this is no party convention. It is our duty on an occasion like this to elevate ourselves into an atmosphere, in which party passion and prejudice cannot exist—to conduct all our deliberations with calmness and wisdom, and to maintain, with inflexible firmness, whatever position we may find it necessary to assume.

CONFIRMATION OF GEN. ROBERT E. LEE AS COMMANDER IN CHIEF AND THE GENERAL'S RESPONSE² APRIL 23, 1861

The President: Major General Lee, in the name of the people of your native State, here represented, I bid you a cordial and heartfelt welcome to this hall, in which we may almost yet hear the echo of the voices of the statesmen, the soldiers and sages of bygone days, who have borne your name and whose blood now flows in your veins.

We met in the month of February last, charged with the solemn duty of protecting the rights, the honor and the interests of the people of this Commonwealth. We differed for a time as to the best means of accomplishing that object; but there never was, at any moment, a shade of difference amongst us as to the great object itself; and now, Virginia having taken her position, as far as the power of this convention extends, we stand animated by one impulse, governed by one desire and one determination, and that is that she shall be defended; and that no spot of her soil shall be polluted by the foot of an invader.

When the necessity became apparent of having a leader for our forces, all hearts and all eyes, by the impulse of an instinct which is a surer guide than reason itself, turned to the old county of Westmoreland. We knew how prolific she had been in other days, of heroes and statesmen. We knew she had given birth to the Father of his Country; to Richard Henry Lee, to Monroe, and last, though not least, to your own gallant father, and we knew well, by your own deeds, that her productive power was not yet exhausted.

Sir, we watched with the most profound and intense interest the triumphal march of the army led by General Scott, to which you were attached, from Vera Cruz to the capital of Mexico; we read of the sanguinary conflicts and the bloodstained fields, in all of which victory perched upon our own banners; we knew of the unfading luster that was shed upon the American arms by that campaign; and we knew, also, what your modesty has always disclaimed, that no small share of the glory of those achievements was due to your valor and your military genius.

Sir, one of the proudest recollections of my life will be the honor that I yesterday had of submitting to this body the confirmation of the nomination made by the Governor of this State, of you as commander in chief of the military and naval forces of this Commonwealth. I rose to put the question, and when I asked if this body

would advise and consent to that appointment, there rushed from the hearts to the tongues of all the members, an affirmative response that told, with an emphasis that could leave no doubt of the feeling whence it emanated. I put the negative of the question for form's sake, but there was an unbroken silence.

Sir, we have, by this unanimous vote, expressed our convictions that you are, at this day, among the living citizens of Virginia, "first in war." We pray to God most fervently that you may so conduct the operations committed to your charge, that it will soon be said of you, that you are "first in peace," and when that time comes you will have earned the still prouder distinction of being "first in the hearts of your countrymen."

I will close with one more remark.

When the Father of his Country made his last will and testament, he gave his swords to his favorite nephews with an injunction that they should never be drawn from their scabbards, except in self-defense or in defense of the rights and liberties of their country, and, that if drawn for the latter purpose, they should fall with them in their hands, rather than relinquish them.

Yesterday, your mother, Virginia, placed her sword in your hand upon the implied condition that we know you will keep to the letter and in spirit, that you will draw it only in her defense, and that you will fall with it in your hand rather than the object for which it was placed there, shall fail.

Major General Lee responded as follows:

Mr. President and gentlemen of the convention: Profoundly impressed with the solemnity of the occasion, for which I must say I was not prepared, I accept the position assigned me by your partiality. I would have much preferred had your choice fallen on an abler man. Trusting in Almighty God, an approving conscience, and the aid of my fellow citizens, I devote myself to the service of my native State, in whose behalf alone, will I ever again draw my sword.

FAREWELL ADDRESS,³ DECEMBER 6, 1861

Mr. President and gentlemen of the convention: When you called me, in the month of February last, to preside over your deliberations, I was wholly without experience, and had nothing to promise you but fidelity and impartiality in the discharge of my duty. Errors I know I must have committed; but the promise that I made you has been faithfully performed. For the approbation which you have been pleased to express, I am more indebted to your kindness than to any merit of my own, but I ought not and do not thank you the less on that account. We have been engaged in the discussion of subjects of the most intense interest, calculated to arouse into action the highest energies of the human intellect and the stormiest passions; but I can state, with truth, that during my administration of the duties of the chair, not a word was spoken by any member that violated the order and decorum of debate. To have presided over such a body of gentlemen is a distinction of which any man might well be proud. I shall cherish the recollection of it to the latest hour of my life. Gentlemen, the clouds are lowering, the tempest is brewing all around us; the forked lightning is seen, and the muttering thunder is heard in the distance. By the blessing of Providence upon the arms of our brave defenders, the storm may yet be averted; but, if not, and it shall burst with fury upon us, don't turn your backs to it—turn your faces. Don't give up the ship, and never despair of the Republic; all will yet be well, if each one of you will adopt for his motto, with the change of a single word, the last signal of England's greatest naval hero: "The South expects every man to do his duty."

CUTBACK IN AIRCRAFT NUCLEAR PROPULSION PROJECT (ANP)

Mr. PRICE. Mr. Speaker, I ask unanimous consent to extend my remarks at this point in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. PRICE. Mr. Speaker, I have read the President's statement concerning the cutback in the Aircraft Nuclear Propulsion ANP project, and am glad that he has made a forthright decision on the program. It is a decision I regret and question. This means indefinite delay for the flight test program. It is true that AEC will continue with ANP research, but at a much reduced rate.

In view of the large expenditures to date, and the further expenditures required to achieve nuclear flight, I can understand the President's decision in relation to other competing demands for funds.

I hope, however, that the President's message will not set a precedent for other atomic energy projects. The message adopted the criterion used by the Defense Department in past years of the necessity of achieving a militarily useful aircraft in the foreseeable future. It has been my position and that of many members of the Joint Committee on Atomic Energy that we cannot foresee the military uses of an atomic powered engine until we get an experimental engine in operation. When something has been demonstrated our military people see a great many uses. For example, I note the message cites our greatest need for expansion in the Polaris nuclear submarine system. This combines the nuclear submarine with a solid fueled missile and a lightweight nuclear warhead. If the United States had waited until it foresaw a militarily useful purpose for each of these components we would have no Polaris system today.

I note also that the defense message sees a military purpose in the Skybolt system which utilizes a conventional aircraft with only a limited range to provide a mobile launching platform for intermediate range missiles. This is the same system originally recommended for nuclear powered aircraft of virtually unlimited range, known as the Camal system.

The amount recommended for appropriation to AEC will unfortunately not provide for the research and development of any experimental nuclear powerplant for a nuclear aircraft. It will only provide for some laboratory work in high temperature materials.

I have pointed out many times that we could have had nuclear aircraft in flight today if it had not been for the on-again, off-again system of mismanagement by the Defense Department and its scientific advisers.

I can see the same approach creeping into the management of other defense projects and the Rover nuclear rocket program. I expect to have more to say on these problems at a later date.

² Ibid., pp. 186-188.

³ Ibid., pp. 455-456.

entry and permanent residence in this country. Improved procedures and precise rules of evidence in judicial action bearing on immigration, deportation and naturalization are proposed in my bill to serve to correct laxities harmful to the national interest:

Full analysis of my bill follows:

Sections 1, 2, and 12 incorporate and codify into permanent law the provisions of several successive temporary enactments facilitating the immigration of alien orphans adopted by U.S. citizens.

The eligibility requirements would remain virtually unchanged except that the maximum age of the adopted orphan who may enter the United States outside of the applicable immigrant quotas is set at 10 years of age instead of 14. This change follows the recommendations of the interested social welfare organizations and reflects their belief that such lowering of the age of the adopted orphan would be in the best interest of the child as well as the adopting family.

The petition procedure prescribed in section 8 (a) and (b) of the bill is designed to eliminate abuses and hardships resulting from "proxy" adoptions of a child never seen by the adoptive parents. The procedure also requires compliance with the adoption requirements of the State of the child's proposed residence.

Sections 3 and 16 accord veterans of the Korean hostilities the same naturalization privileges as existing law accords veterans of World War I and World War II. A bill containing these provisions was introduced by the gentleman from California [Mr. SHELLEY] and passed the House of Representatives in the 86th Congress.

Section 4 provides for a comprehensive procedure to govern judicial review of orders of deportation. The procedure prescribes uniform and orderly venue which will permit the expeditious handling of judicial review of administrative orders under which expulsion of certain aliens is ordered.

The necessity for strengthening the laws in respect to aliens who resort to repeated judicial reviews and appeals for the sole purpose of delaying justified expulsion from this country, has been long recognized. Obviously, whatever the ground for deportation, any alien has the right to challenge administrative findings of deportability through judicial process. However, the frequency of abuses and the increase in number of cases taken to courts for the evident purpose of delaying the expulsion warrants legislative action, particularly in view of the fact that the overwhelming majority of aliens involved in using the delaying tactics are criminals, racketeers, traffickers in narcotics, or agents of subversion.

A bill containing identical provisions passed the House of Representatives in the 85th and 86th Congresses. The Judicial Conference of the United States under the chairmanship of the Chief Justice of the United States has at its September 1959 session approved the bill and at its September 1960 session the Conference decided to adhere to its approval of the bill so far as it relates to deportation orders.

Section 5 is designed to facilitate and expedite the reuniting of families by creating a quota reserve consisting of unused quota numbers which would annually be utilized for the issuance of visas to immigrants within a stated degree of relationship to citizens of the United States or resident aliens.

The size of the quota reserve will, of course, vary from year to year, depending on how many quota numbers remain unused at the end of each fiscal year. Generally, in the last decade the aggregate of unused quota numbers averaged 55,000 annually. In the last fiscal year, 1960, the number was 53,514.

Relatives of U.S. citizens and lawfully resident aliens chargeable to immigration quotas of less than 7,000, will be entitled to obtain immigrant visas from the quota reserve. Each quota country will be entitled to a percentage of the quota reserve equal to the percentage which such country's regular quota bears to the total of all annual quotas under 7,000. For example, if a country's quota represents 5 percent of that total, the immigrants from that country would have access to 5 percent of the quota reserve.

Relatives who will benefit from the quota reserve include: (1) Parents and unmarried sons and daughters over 21 years of age of U.S. citizens; (2) spouses and unmarried sons and daughters, minors or adults, of lawfully resident aliens; and (3) married sons or daughters or brothers and sisters of U.S. citizens and their spouses and minor children, if accompanying them.

Section 6 is designed to meet certain changing world conditions, specifically the situation created by the increasing number of new independent countries, each of which is authorized under existing law to be allocated an annual immigration quota of 100.

Inasmuch as there are now 20 independent countries, recognized by the United States, in the geographical area described by law as the "Asia-Pacific Triangle," the existing 2,000 quota ceiling imposed on that area as a whole, is proposed to be removed so that in the event that an additional independent country located in that area obtains U.S. recognition, a quota of 100 annually could be proclaimed for its nationals.

Similarly, anticipating the forthcoming assumption of an independent status by the West Indies Federation, this section of the bill proposes to assure to this or similar new political entities an immigration quota equal to the total of subquotas or quotas now available for each of the component parts of such a new entity.

To cite an example, upon the merger of Syria and Egypt into the United Arab Republic, the new entity was allocated only 100 quota numbers annually, while prior to the merger each of the two component parts had a 100 quota for itself. This situation will be corrected under section 6 of the bill.

Section 7 proposes perfecting amendments to existing procedures under which highly skilled immigrants may obtain preferential status under the respective immigration quotas. For the purpose of establishing and maintaining a coordinated policy which will tend to serve national interests in the field of defense, science, technology, public health, and cultural progress, a five-member Skilled Specialists Selection Board is proposed to be created, representing the Secretaries of Defense, Agriculture, Commerce, and Health, Education, and Welfare; as well as the Attorney General. The Board will review applications for entry of specially qualified aliens and make recommendations to the Attorney General.

Section 8(c) proposes to strengthen existing law by giving the Attorney General a new legal instrumentality to counteract the increasing number of fraudulent acquisitions of nonquota status through false marriages between aliens and U.S. citizens, often prearranged by racketeers. The Attorney General has recently reported to the Congress about the increasing number of such sham marriages indicating the existence of marriage schemers operating in various parts of the country, particularly on the waterfronts, and arranging for high fees for deceitful marriages involving, in most instances, alien seamen.

Section 9 eliminates from the excluding clauses of existing law the listing of tuberculosis and leprosy and provides simply for the exclusion of aliens who are afflicted with any dangerous contagious disease.

The original text of that provision of existing law was based upon recommendation of the U.S. Public Health Service made in

1951. Recent developments in the field of medicine have prompted the Service to recommend simpler and apparently more precise language which, in the opinion of medical experts, will be conducive to a more effective administration of the law.

The provisions of temporary statutes providing for the admission of relatives of U.S. citizens or resident aliens afflicted with tuberculosis, if proper safeguards are provided and approved by the Attorney General and the U.S. Public Health Service, are being included into permanent law under the first part of section 11 of the bill.

Section 10, two latter parts of section 11, and section 14 codify existing law applicable to the granting of waivers of certain excluding provisions and consolidate with the basic statute the matter now contained in the enactments of 1954 and 1957.

Section 13 eliminates existing requirement that a visa applicant state in his application his race and ethnic classification. Inasmuch as neither race nor ethnic classification have any bearing on the eligibility of an alien to enter the United States, the elimination of the two items from application forms is proposed.

Section 15 is designed to correct certain judicial misinterpretations of "saving clauses" of the naturalization law by establishing a uniform rule of naturalization under the provisions of existing law.

Sections 17 and 18 prescribe rules of evidence in judicial revocation of citizenship and in administrative determinations of voluntary or involuntary expatriation.

Section 19 grants to the spouse and child of a naturalized U.S. citizen, who after attaining the age of 60 has retired from his occupation, the privilege of retaining U.S. citizenship if the entire family resides abroad.

Sections 20, 21, 22, and 23 provides for technical rearrangements in the permanent statute resulting from codification; and section 24 repeals several obsolete or temporary enactments consolidated with the permanent statute pursuant to the bill.

MEETING THE CONSTITUTIONAL CRISIS

Mr. ALFORD. Mr. Speaker, I ask unanimous consent to extend my remarks at this point in the body of the Record and to include extraneous matter.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

Mr. ALFORD. Mr. Speaker, we have many patriotic organizations in the United States whose loyalty and support of our system of government under the Constitution form a vast reserve of power.

Because of the current critical state in the affairs of our Nation, it was indeed a cheering experience to attend on February 2, 1961, in the Nation's Capital, the annual convention of the American Coalition of Patriotic Societies. This convention took action in the direction of meeting the constitutional crisis which has now reached a crucial stage.

The American Coalition is an organization formed in 1929 to coordinate the efforts of patriotic, civic, and fraternal societies. Its membership includes such organizations as the National Society, Sons of the American Revolution; the National Society, Daughters of the Revolution; the General Society of the War of 1812; the National Sojourners, Inc.; the Military Order of the World Wars;

the National Camp, Patriotic Sons of America; the Military Order of the Loyal Legion; and the Junior Order United States American Mechanics. Altogether, it has more than 120 patriotic groups with a membership totaling above 4 million.

The critical situation in our country above referred to is a movement to overthrow our constitutional form of government, to do away with the hard-earned liberties that our people have enjoyed, to take them out of the ranks of free peoples, and to place them under the stern, if invisible, hand of an autocratic dictatorship.

The fact that this movement to overthrow our Government is beclouded with secrecy is its principal danger, for the tyranny of oppression must be felt in order to be discerned.

What is some of the evidence? The facts that a large part of one's daily earnings are taken away from us by invisible taxes and much of it squandered, that our daily affairs are being directed and our people being regimented, that our education is being controlled, and that intelligent discussion of all public operations is being increasingly stifled, add to the gravity of the crisis.

At this point, Mr. Speaker, I would invite attention to a speech by me in the House of Representatives on September 5, 1959, on the subject of "The Constitutional Crisis: Its Threat to Liberty and the Remedy"; also to a series of speeches in the House on March 14, 15, and June 17, 1960, under the title "National Constitutional Crisis: A Plan for Action."

The American Coalition of Patriotic Societies in the action above referred to aims to deal directly with one of the most obvious and at the same time one of the most dangerous outcroppings of this conspiracy to overthrow our constitutional form of Government.

It threatens with the assumption of autocratic power by members of the Supreme Court in attempting to exercise a power and authority which have not been granted to them. It attempts to deal with the usurpation of power by appointed agencies of Government.

In addition, it aims to deal with the enforcement of unlawful acts of members of the Court under the pretense that these acts of members of the Court are lawful acts of the Supreme Court.

The States, in the agreement known as the Constitution of the United States, established three separate and distinct agencies of Government to administer a part of their governmental affairs with the intention of limiting the powers thus conferred.

The powers granted to the Supreme Court were limited to judicial powers. All legislative powers delegated in this contract were given to the Congress. No legislative powers were given to the Supreme Court.

Furthermore, the officers and employees of the Court were required to be bound by an oath to support the Constitution. Thus they must be bound by its provisions in order to function as a court.

The recommendation of the American Coalition of Patriotic Societies is to the

effect that the States which have constituted the Supreme Court, as well as other Federal Courts, are responsible that such agencies of their employment confine their actions within the limits they have authorized.

Where the Supreme Court of the United States permits its name to be used and the seal of the Court to be affixed to a document which purports to be a decision of the Supreme Court but which in fact is not an act within the authority granted, it is merely a representation of an effort of the members of the Court to usurp power not granted to them. In such cases, it is the function of the States affected by invalid rulings, to act as has been suggested by the American Coalition.

It is the law, which was established many years before our Constitution was drafted, that in such an agency as was established under the agreement, where its authority to act is limited, the employer who establishes the agent alone has power in law to declare its invalid action to be ultra vires and void.

The States which have constituted the Supreme Court must act in such cases where the members of the Court have acted without authority and have transgressed the rights of the States of New York, or Pennsylvania, or Arizona, or Arkansas, or Virginia. The State must declare invalid and not the law within its jurisdiction the invalid actions of members of the Supreme Court where their actions lack authority and represent the exercise of an assumed power which has not been granted to them under the contract which assigns to them their duties.

It is gratifying to be able to present to the Congress and the Nation the text of the indicated resolution which follows:

Whereas the people of the United States now face a serious constitutional crisis in which they have to deal with increasing centralization of power in Federal agencies of Government with corresponding loss of cherished liberties as individuals and encroachments on the rights and powers of the governments of the States as guaranteed under the Constitution of the United States; and

Whereas some of the most serious of these developments are attributable to attempted usurpations on the part of members of the Supreme Court; and

Whereas these attempted usurpations include interferences with the State of New York in the exercise of its police power to protect its people from moral degradation, the right of the Commonwealth of Pennsylvania to investigate and eradicate enemies of the Nation and State aiming to overthrow our Government, and the right of the State of Arizona to prevent alien enemies from being licensed to practice law within its jurisdiction; and numerous interferences with rights of various States in the operation of State-owned school systems, as well as with the right of the people generally to exercise powers for the protection of their morals, education, health, and general welfare; and

Whereas such attempted usurpations have had adverse effects on law enforcement branches of the Federal and State Governments and on the people of many States because of the failure of the legislatures of the affected States to take proper constitutional actions to make definite what is the law in those States or by the enactment of equally lawless counter-coercive measures in attempts to resist invalid decrees of Court

members, all of which have served to recognize as valid the illegal rulings; and

Whereas these failures on the part of the State legislatures to meet their constitutional obligations amounts to ratification through their neglect to act and has made them copartners in the crime of usurpation, at least equally guilty with members of the Court; and

Whereas criticisms against the Supreme Court have had the effect of shielding from censure the legislatures and Governors, who are entirely to be blamed for the invalid actions aforesaid being treated by law enforcement officers as valid acts of the Court; and

Whereas a long train of illegal, unconstitutional rulings, if allowed to be treated as law, either through action or inaction, will result in the overthrow of our form of limited constitutional government in favor of an unlimited and absolute centralized autocracy;

Resolved, That the American Coalition of Patriotic Societies, Inc., commends the following plan of action:

1. That the several States, in their highest sovereign capacities through their legislatures, pass appropriate acts declaring the illegal rulings of members of the Supreme Court as beyond the Court's constitutional authority, invalid, and not law within the jurisdiction of the State concerned, thereby clarifying and making definite for the benefit of law enforcement officers so that they can know what is the law in the given State; and

2. That the people of the several States elect to legislative bodies, Federal and State, only those persons who are willing to initiate and to enact measures to defend the people and the States from tyrannical usurpation of power through illegal rulings by members of the Court; and

3. That copies of this resolution be sent to—

(a) The President of the United States and all Members of the Congress;

(b) The Governors of the several States, and presiding officers of the houses of the State legislatures for forwarding to appropriate committees; and

(c) The Attorney General of the United States and of the several States.

CONSTITUTIONAL CRISIS IN A SOVEREIGN STATE

Mr. ALFORD. Mr. Speaker, I ask unanimous consent to extend my remarks at this point in the body of the Record and to include extraneous matter.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

Mr. ALFORD. Mr. Speaker, for many weeks the eyes of the Nation have been turned toward the State of Louisiana and its efforts to maintain the State's control over its schools in line with the principles and language used in the U.S. statute approved August 30, 1890—title 7, United States Code, section 323.

Despite all the publicity given to this important subject the great mass of our press, editors, and commentators, through ignorance or design, have failed to allow proper consideration to the fact that there is a basic law affecting this problem, which affords a basic solution. Furthermore, what we know to be well established law must govern any proper solution, if our Nation is to preserve its established form of government.

The issues involved relate to the legal effect of what is spoken of as the 1954

ruling of the Supreme Court. It is or is it not a ruling of the Court? To be a ruling of the Court it must be within the limits of power given by the Court and that limit is clearly stated to be judicial power.

In determining if this is a ruling of the Supreme Court, of necessity, we must deal with an analysis of what is beyond the power of the Court and, hence, is merely an act of the justices of the Court made outside the authority given to the Court and, therefore, in law, not an act of the Court. This question must be answered: What is and what is not within the authority granted to the Court as agreed to by the States which established the Court and gave it authority, and limited its powers?

Also we must work out the answer to this query: Has the Court, while acting as a court, been accorded the authority or the power to enter the ruling in question? Is this a so-called decision, merely an act of employees of the Court, made without authority?

If it is considered that the Supreme Court is an agency of limited powers and that its limits are set out in the Constitution, then any act of the Justices of the Court in excess of or beyond the limits of judicial powers is not an act of the Court.

There is no law in existence under which the unauthorized act of the employees of the Court can be made legally a decision of the Supreme Court of the United States. Nor can it be given the effect of law except by the direct or implied ratification by the government of the State when the laws of that State are affected by it. The State can make it the law; the Court cannot.

In a speech to the House on September 5, 1959, entitled "The Constitutional Crisis: Its Threat to Liberty and the Remedy," I included a number of illuminating editorials from the now well-known western newspaper, the *Pioche Record*, of Pioche, Nev. My remarks and the editorials were subsequently published in book form under the same title by Robert Speller & Sons, 33 West 42d Street, New York, N.Y., in their "Makers of History" series.

Later, on March 14 and 15, and June 17, 1960, under the title "National Constitutional Crisis: A Plan for Action," I made a series of three speeches to the House in which were included the texts of measures introduced into the General Assembly of Virginia. These measures represent the only constitutionally sound and entirely legal solution of this critical problem now before the Nation.

The illegal attempts of any groups of men under the pretense of an assumed authority to overthrow our form of rule of and by the people must be stopped.

The effort to establish a precedent for autocratic rule, which ignores the limits of power to agencies of our Government contrary to the principle of the consent of the governed, represents the greatest danger this Nation has faced. It must be dealt with before it becomes a part of a system.

A legal analysis of the proposed plan, set forth in the pending Virginia legislation, is to be found in an editorial pub-

lished in the February 18, 1960, issue of the *Pioche Record* and in my remarks to the House on March 14, 1960, previously mentioned.

At this point, Mr. Speaker, I would emphasize that in order to maintain the liberties of our people, as so skillfully worked out by the founders of our Republic, it is the task of the voting citizens to study the gradual encroachments upon their powers and rights of Government through the usurpation of unauthorized powers on the part of Government agents.

The founders of our Government have furnished the means of defense against unlawful acts of their agents through the provisions of the contract among the States known as the Constitution of the United States.

All that is needed to preserve the liberty and freedom gained by the Revolutionary War is to apply well-established law. What we have to deal with here is a challenge to the political organizations of the country. We must not let the peoples' right to self-government end.

The latest discussion of this problem by the *Pioche Record* is an editorial in its November 24, 1960, issue. This editorial deals with the policies of the States in the handling of this crisis. I am a strong believer in the rights given to the sovereign States to govern their own affairs under the greatest of all contracts, the Constitution of the United States; therefore, I do not presume to dictate the policies of any people. This editorial, however, deals so specifically with constitutional questions that I feel it should be made a part of the *Record* dealing with the constitutional crisis and I commend it for the study of all concerned with constitutional questions, especially Members of Congress, Federal officials, Governors, attorneys general, and members of the legislatures of the States. The editorial is as follows:

THE CONSTITUTIONAL CRISIS IN LOUISIANA— A STATEMENT OF PRINCIPLE

The government of Louisiana in a series of hastily considered moves has joined in with the general trend of lawlessness of our State governments.

The unwillingness of State governments to perform the role allotted to them under the Constitution and which it was intended they would perform, has become a serious threat to our ability to maintain our constitutional form of government. The only other form of government open to us is dictatorship, as was predicted by Benjamin Franklin.

This sit-down strike on the part of the governments of the States has resulted in so much confusion in the administration of our laws that it becomes a matter of national concern why this should be so.

This Louisiana situation may be clarified by an analysis of the law which is applicable to the facts that are here involved.

THE INERT STATE GOVERNMENTS

1. The government of Louisiana has ratified and approved as the law of Louisiana, that their school system is to be regulated and controlled by the illegal rulings of the members of the Supreme Court. These illegal rulings are now the law of Louisiana.

2. The government of Louisiana has failed to give proper consideration to the fact that they have taken this action by inaction. They have chosen to ignore the fact by acquiescence in the "ultra vires" act of their agent, they have approved and allowed to

become law a matter that, in order to be repudiated, required disapproval by the government of the State.

Such action by the State is necessary to be taken by the State if the actions of the law enforcement agencies of government are to be controlled.

Also it is necessary for the State to act because disapproval of the invalid action of members of the Court, can only be of legal effect when made by the State. Disapproval can come only from a party to the contract which gives to the Court its powers. The State of Louisiana, while not a party to the original contract, acquired the status of a party when admitted to the Union.

THE LAW ENFORCEMENT AGENTS VERSUS THE LAWMAKERS

The State of Louisiana in its present dealings in relation to the school laws of the State are not dealing with the Supreme Court. They are dealing with law enforcement agencies.

4. These law enforcement agencies have not been given the power under the Constitution to question the authority of the members of the Supreme Court. Even where the authority is not granted to members of the Supreme Court, to act as a court, in making a decision, it is not within the power of the law enforcement agencies to say so. That is a power which under law is only given to the law-making power of the governments of the States whose law is in question. The legal reason for this is because all the authority given to the Court was given to them by the States and the States acting through their designated agents are the employers and the members of the Court are the employees.

5. In dealing with the law enforcement agents the State of Louisiana is itself guilty of lawlessness, when it tries to interfere with the enforcement of a law which the government of Louisiana itself had established.

That the government of Louisiana has done this by inaction and acquiescence does not change the legal effect of their actions.

As a matter of law the implied approval and ratification gives the unauthorized acts of the Judges of the Court, up to the time contrary action is taken by the State, the effect of law within the jurisdiction of Louisiana.

The unauthorized action of the members of the Court has been made the law, not by the Supreme Court, but by the inaction of the Governors and the legislatures of the States whose laws are being interfered with.

THE STATES ARE UNITED BY JOINING TOGETHER IN GRANTING A DEFINITE AUTHORITY TO THREE AGENCIES WHICH THEY HAVE CREATED

6. To avoid the confusion which comes from too many cooks our Constitution is drawn so as to simplify the remedy of this situation. In confers a limited authority to an agent and under the well-established law, the control lies with those who create the agent and who limit its authority. They alone can deal with the agents' limit of power. The Constitution grants no power or authority to the law enforcement agencies, nor to anyone else, to determine what is the law in these circumstances.

7. All the power conferred upon the Court comes from the States who signed the agreement. There is no other authority possible, except what was intended to be granted by the States which signed the contract, and the authority therein granted to the Supreme Court is limited to judicial (not legislative) powers. Under the Constitution "all legislative authority herein conveyed is given to the Congress."

THE ENFORCEMENT OF AUTHORITY MUST LIE IN THE SOURCE OF AUTHORITY

8. As far as our law relates to the authority granted to the Supreme Court, it is clear and has never been denied, that all authority

has come from the States. This authority is recorded in the contract by and between the States, known as the Constitution of the United States.

It is impossible for the Supreme Court to have any authority that is not granted by the States as set out in that document. There is no other source of authority and the Court has no power to change that authority. Neither do the States have such power except under the forms of procedure set out in the Constitution and established law gives the answer where the agent exceeds its authority.

THE INTENT OF OUR CONSTITUTIONAL FORM OF GOVERNMENT IS TO DESTROY AUTOCRATIC POWER BY LAW

As usual with complex problems the situation is simplified by going to fundamental principles. We are a Nation of law. These problems are all a matter of law. The number one question in every constitutional problem is "What is the law?"

If our form of government is to be restored, so that the rule of the people is to be retained, it must be done through recognizing and enforcing the law.

Applying this to the Louisiana situation: The government of Louisiana through its legislature, approved by the executive, has the specially reserved, constitutional and legal right, to declare that the school case rulings are not decisions of the Court and not the law, because not within the constitutional authority given to the Court. After the States government exercised this right, from then on, all law enforcement agents of government are in the position where all doubt has been removed. What is the law, under the Constitution has been defined by the highest legal authority. In order to conform with their oath of office they must act in accordance with the law as so defined.

The reason is because this law of the State of Louisiana conforms to the requirements of the Constitution, in the exercise of the authority inherent to the State under that contract.

The exercise of this right by the State calls for a legal enactment in the exercise of the full law making power of the State. The law enforcement agencies need not consider "resolution" of the legislature as a directive to guide their work of enforcing the law because in effect a resolution is merely an expression of the opinion of the members who vote for it. In order to be classed as a law it must be a duly enacted bill.

All law enforcement agencies are bound by an oath to support the Constitution and all law that is enacted in conformity to that document is a directive to all branches of the law enforcement agencies.

LOANS TO VETERANS AS PROVIDED IN H.R. 5723

Mr. DULSKI. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. DULSKI. Mr. Speaker, H.R. 5723 provides an additional period of time during which veterans of World War II and the Korean conflict will be eligible to obtain a guaranteed or direct loan, as follows:

World War II: 10 years from date of discharge, plus an additional year for each 3 months of active duty, but in no case is a loan to be provided after July

25, 1967, and in no event will eligibility expire prior to July 25, 1962. Veterans with service-connected disabilities eligible without regard to length of service until July 25, 1967.

Korean conflict: 10 years from date of discharge, plus an additional year for each 3 months of active duty, but in no case is a loan to be provided after January 31, 1975, and in no event will eligibility expire prior to February 1, 1965. Veterans with service-connected disabilities eligible without regard to length of service until January 31, 1975.

Loans for both World War II and Korean conflict veterans may be closed after expiration of entitlement date, provided application is received by Veterans' Administration prior to expiration date.

The bill directs the Secretary of the Treasury to advance the following sums, upon request of the Administrator of Veterans' Affairs, for use in any housing credit shortage area, when the Administrator finds that private capital is not generally available, but with primary emphasis to be placed on areas in which participation in the guaranteed loan program has been disproportionately low, that is, areas presently designated as direct loan areas, and makes provision for orderly repayment of funds to the Secretary of the Treasury which the Administrator determines not to be necessary for liquidation of the program:

[In millions]	
4th quarter, fiscal year 1961-----	\$100
After June 30, 1961-----	400
After June 30, 1962-----	200
After June 30, 1963-----	150
After June 30, 1964-----	150
After June 30, 1965-----	100
After June 30, 1966-----	100

Reported: Committee on Veterans' Affairs, unanimously, March 23, 1961.

HOUSE JOINT RESOLUTION 73

This resolution has two purposes: First, to determine what steps shall be taken to improve the care and rehabilitation of veterans who are elderly, chronically ill, or otherwise handicapped; and second, to relieve the problem faced by the Veterans' Administration because of increasing utilization of its limited hospital beds by long-term patients, thus reducing beds available for other types of patients.

The special study sought to be authorized by the resolution would be conducted by the Veterans' Administration, at a maximum cost of \$300,000. It would be directed at determining the advisability and practicability of various methods of rehabilitation and of preventing physical and mental deterioration of veterans receiving or entitled to receive hospitalization or domiciliary care from the Veterans' Administration. The services of not more than 500 veterans who are receiving long-term hospital or domiciliary care from the Veterans' Administration would be utilized. The resolution requires that the study be completed before December 31, 1963, and report with recommendations to be made to the Congress by March 31, 1964.

Reported: Committee on Veterans' Affairs, unanimously, March 23, 1961.

REVISION OF RULES OF HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES

Mr. YATES. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. YATES. Mr. Speaker, on Monday, April 10, the distinguished gentleman from California [Mr. DOYLE] announced that he was chairman of a subcommittee of the House Committee on Un-American Activities which was considering possible changes in the committee's rules. The gentleman from California graciously invited all Members who desire to propose any changes in the committee's rules to appear before his subcommittee this week.

Mr. Speaker, I called the gentleman from California this morning and told him that earlier this year I had filed a bill, House Resolution 221, to create a select committee to conduct a study of the rules of the House of Representatives and to recommend any changes it deemed appropriate. For sometime, a number of the Members and myself have believed that the House rules should be changed in several respects, and we hope to obtain a hearing on the bill later this session. It is possible that when our work on proposed change in the rules is finished, we may very well recommend changes in committee procedures, including the procedures of the House Committee on Un-American Activities. Our research is not yet completed and will not be for some time, because of committee hearings and other pressing business.

I make this statement in order that the RECORD may show that the fact that we do not appear before the gentleman's subcommittee this week in accordance with his request does not mean that we are not interested in possible changes in committee procedure which may affect the House Committee on Un-American Activities. I don't know in what respects the rules or procedures of that committee differ from those of other committees. I was under the impression that the rules of the House governed the procedures of all committees until the gentleman from California indicated that his committee had special rules.

At any rate, knowing the gentleman as I do, I am quite sure that he does not wish or intend to foreclose we or any other Member from making recommendations for rules changes at a later date.

Mr. COHELAN. Mr. Speaker, I ask unanimous consent to extend my remarks at this point in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. COHELAN. Mr. Speaker, I would like to commend my distinguished colleague the gentleman from Illinois [Mr. YATES], on his statement encouraging a